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Hearing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 CV 691 (LAK)

6 STEVEN DONZIGER, ET AL.,

7 Defendants.

8 -----x

9 April 16, 2013
10 9:35 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 GIBSON DUNN & CRUTCHER

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24 BY: JOHN W. KEKER

D4gdche1

Hearing

1 THE CLERK: Chevron against Donziger.

2 Counsel for plaintiff Chevron, are you ready?

3 MR. MASTRO: Ready, your Honor.

4 THE COURT: Good morning.

5 MR. MASTRO: Good morning, your Honor.

6 THE CLERK: Counsel for defendant Donziger, are you
7 ready.

8 MR. KEKER: We are, your Honor. Good morning.

9 THE COURT: Good morning.

10 THE CLERK: And counsel for Camacho and Piaguaaje, are
11 you ready?

12 MR. VESELKA: We are. Good morning, your Honor.

13 THE COURT: What is it, Mr. Keker?

14 MR. KEKER: Your Honor, there has been a development
15 in the case last night that I would like to address before the
16 hearing begins.

17 THE COURT: In what case?

18 MR. KEKER: This case. A motion that was filed at
19 11:30 last night after I went to bed that I think affects the
20 nature of this hearing.

21 THE COURT: Tell me what motion that was.

22 MR. KEKER: There was a motion filed that I saw this
23 morning, a motion to compel, with a two-day trigger on it,
24 claiming that there is probable cause to believe that a crime
25 was committed with respect to either getting a court order from

D4gdchel

Hearing

1 Ecuador or suggesting a court order from Ecuador and/or not
2 telling the Court that Ecuadorian counsel, in the face of
3 dueling expert affidavits, was seeking a court order. Those
4 two things, Chevron has now taken the position, amount to
5 obstruction of justice and that there is on the current record
6 probable cause to believe --

7 THE COURT: Mr. Keker, you will have time to address
8 this. Your papers are due, I think, tomorrow night.

9 MR. KEKER: Well, that is not time to address it,
10 especially when I am here, your Honor, and it changes the
11 nature of decisions I need to make about whether or not we are
12 going to testify. Mr. Donziger and I, when I went to bed last
13 night, were planning to testify at this hearing.

14 If you believe that there is probable cause on the
15 record before you now to believe that a crime has been
16 committed, we are not going to testify, and that seems to me
17 the only sensible position that we can take.

18 And that leaves us three choices. We think their
19 position is absurd, that this escalating of a discovery dispute
20 into a probable cause that a crime has been committed is
21 something that you ought to stop right now and say, no, that's
22 not the situation here and that's not what we are dealing
23 with --

24 THE COURT: I take it your position is that I should
25 do that without having had the benefit of reading it, without

D4gdche1

Hearing

1 having had a written response from you, I should just on your
2 say so put a stop to it?

3 MR. KEKER: Then the second alternative, your Honor,
4 would be to give us, in due course -- normal motion practice,
5 not discovery motion practice -- the right to respond to the
6 motion, then you make a ruling, and continue this hearing until
7 a ruling is made.

8 If you think on this record that there is probable
9 cause to believe obstruction of justice has occurred, a crime,
10 then we are not going to testify. We came to testify. We were
11 expecting to testify. Chevron has ratcheted this up to what we
12 think is an absurd, ridiculous level. But when you are accused
13 by these folks of a crime and they are presenting this to you
14 and you are about to rule on it, as you say, maybe in two days,
15 we are not going to testify in the face of that kind of threat.

16 And, yes, I'm asking you, go read it. We can talk
17 about it. We think it's beyond the pale to have this be a
18 hearing on whether or not a crime has been committed.

19 THE COURT: That's not what this hearing is about, as
20 far as I understand it. I told you what the issues in this
21 hearing were in writing.

22 MR. KEKER: Yes, you did, sir, but what they've now
23 done is say --

24 THE COURT: What they've now done is make, I gather, a
25 discovery motion in connection with that hearing; is that

D4gdche1

Hearing

1 right?

2 MR. MASTRO: Correct, your Honor.

3 THE COURT: Is that right, Mr. Kekker?

4 MR. KEKER: I wouldn't characterize it as a discovery
5 motion --

6 THE COURT: What is the relief they seek?

7 MR. KEKER: They seek you to say that there is
8 probable cause to believe that a crime has been committed on
9 the current record --

10 THE COURT: We are beyond that.

11 MR. KEKER: -- and then they want some e-mails and
12 they want some discovery.

13 THE COURT: Right.

14 MR. KEKER: It is not really a discovery motion.

15 THE COURT: They want production of certain documents,
16 correct?

17 MR. KEKER: That's one of the things they've asked
18 for.

19 THE COURT: What else?

20 MR. KEKER: Well, most importantly they've asked you
21 to find that there is probable cause to believe a crime has
22 been committed based on the record that's before you now.

23 THE COURT: As a prerequisite, perhaps, and perhaps
24 not --

25 MR. KEKER: If that -- I'm sorry.

D4gdche1

Hearing

1 THE COURT: Don't interrupt me, Mr. Keker.

2 As a prerequisite, perhaps to order earning the
3 production of the documents. Isn't that right?

4 MR. KEKER: No, your Honor. Call it a prerequisite,
5 call it whatever you want, for a federal judge to find that on
6 this record there is probable cause to believe that a crime has
7 been committed has consequences far beyond discovery, and we
8 are not going to go there.

9 THE COURT: Mr. Keker, look, this hearing was
10 scheduled for a finite purpose. We are proceeding this
11 morning. I haven't had time to review with any care whatever
12 got filed at 11:30 last night, and I'm not making any decisions
13 about the hearing that I set up some time ago to decide five or
14 six enumerated issues.

15 You do whatever you want within the confines that I've
16 set. That's your job; not mine.

17 Now, they've made a motion asking me to compel
18 production of documents. You have 48 hours to answer it.
19 Those have been the rules that this litigation has gone forward
20 under for a very long time. That's it.

21 Now, you will answer it, or not, as you choose. You
22 will prevail on it or not, as I rule. It will be moot or not,
23 depending on a whole bunch of other things, and we'll see where
24 we are. And if, after I see your response, assuming you make a
25 timely response, I think you need more time to answer it, I may

D4gdche1

Hearing

1 well give you that. But we are starting this morning and we
2 are going to proceed, and you will do what you think is
3 appropriate in your best professional judgment to represent
4 your clients.

5 MR. KEKER: And, your Honor, I'm trying to be -- I
6 mean -- I'm trying to be constructive about this. We, under
7 these circumstances, can't testify. We are not going to
8 testify. It makes the proceeding more difficult for you, for
9 us, for everybody. We came to do it. Chevron set this up --

10 THE COURT: Look, Mr. Keker --

11 MR. KEKER: OK.

12 THE COURT: Let's face facts, all right? I mean, I
13 know nothing much about this except what you just told me. But
14 if, as you say, they say that there is probable cause to
15 believe that obstruction was committed in the respect alleged
16 and I were to say today for the sake of argument, well, I don't
17 think so, and a grand jury for the Southern District of New
18 York two weeks from now indicts you and takes the view that
19 they think there is probable cause, that's where you are.

20 Now, I'm not suggesting that's what's going to happen.
21 I don't know anything about the merits of it. But you
22 understand that what you are really saying is you really would
23 like an advisory opinion from me.

24 MR. KEKER: No, I'm not. I'm not.

25 I would like you to say that ratcheting up this

D4gdche1

Hearing

1 discovery dispute, which is about whether or not this opinion
2 that comes out of Ecuador and any of the conduct that went with
3 respect to Mr. Fajardo and whether or not he is controlling,
4 this hearing, which was supposed to be limited to your five
5 questions --

6 THE COURT: And is.

7 MR. KEKER: Well, is, but we can't testify in it if
8 they are -- if what they say -- you have to understand that
9 what they're saying is, based on the record before you right
10 now, we've put in affidavits, we've told you what happened,
11 we've told you what the problems are controlling Fajardo --
12 there is no control -- we've told you all of that and they say
13 notwithstanding that there is probable cause to establish a
14 crime. If that's the position that you're going to take in
15 this proceeding, it has grave consequences.

16 I'm not worried about the Southern District Grand
17 Jury. That's not going to happen. But I'm worried about you.
18 And if you're going to take that position based on the record
19 before you now, we're not going to go further with testimony.

20 I'm asking you to figure out a way to make that
21 decision. Either what I would do if I were in your position is
22 read it and say this is ridiculous, forget it, Randy, go away.
23 That's one. Second, I would say, OK, I'll let it be briefed.
24 I'll make a decision. There is no reason we need to do this
25 now. Come back in two weeks, when Keker is back from

D4gdche1

Hearing

1 Afghanistan, and we'll have the hearing that we're trying to
2 have now then.

3 The third alternative is not a good alternative. The
4 third alternative is go ahead with the hearing now under these
5 circumstances. We can't testify, and won't. You'll do
6 whatever you do. And then we'll go whining about it,
7 complaining about it, appealing it, whatever you call it, to
8 the Second Circuit and say this wasn't right, this wasn't fair.
9 That is not a good way to proceed. We don't want to proceed
10 that way.

11 What we would really like is you to go read the thing,
12 think about what the record is before you, and say, you know,
13 this is a discovery dispute, not a probable cause to believe
14 there is a crime, just forget this motion and let's go forward
15 and have a sanctions hearing as we planned.

16 THE COURT: Mr. Mastro.

17 MR. MASTRO: Your Honor, we requested documents from
18 the defendants. They refused. We do believe that we've made a
19 prima facie showing that would warrant the discovery -- we're
20 only here about discovery, your Honor, and we think that that
21 discovery will be revelatory. The discovery is about not only,
22 you know, what they did in connection with ginning up the
23 Ecuadorian court order, but also about any other communications
24 that they had with the Ecuadorian lawyers about document
25 production.

D4gdche1

Hearing

1 And, your Honor, I think that the discovery is
2 warranted on this record, and that's why we made the motion.

3 So, you know, we would like to go forward today, but
4 we think the motion is well founded, because they should have
5 to produce that information. They should have to produce the
6 information of the basic communications they had. They put in
7 an affidavit saying we talked to him, we e-mailed with him,
8 Fajardo, over and over again. OK? That's -- certainly the
9 LAPs representative lawyers say that. And yet -- and they seen
10 describe substance of the communications but they are refusing
11 to produce them.

12 In some cases they've waived. In other cases it seems
13 to me, your Honor should consider that question, because the
14 documents will speak loudly about what happened.

15 THE COURT: I'm just skimming quickly. The first
16 ground of your motion, unless I'm misunderstanding it --

17 MR. MASTRO: Is waiver.

18 THE COURT: -- by skimming it so quickly is that there
19 has been a waiver --

20 MR. MASTRO: Correct.

21 THE COURT: -- of any privilege or work product
22 protection, and if I were to agree with you on that, I don't
23 have to pass on the issue --

24 MR. MASTRO: That's correct.

25 THE COURT: -- of crime fraud.

D4gdche1

Hearing

1 MR. MASTRO: On two grounds. We have waiver and
2 attorney-client privilege.

3 THE COURT: Mr. Keker, isn't that right? In other
4 words, if I were disposed to grant this motion at all and I
5 were to do so on the ground that there has been a waiver, there
6 is no question of passing on crime fraud, is there?

7 MR. KEKER: That certainly is correct, your Honor.

8 But what took me by surprise, and it just shows how
9 naive I am, is that Chevron, which has been recently aggressive
10 in this case, is now taking the position that what we're
11 dealing with here is criminal activity. And until you tell
12 them to get off it, which in most courts, I mean, somebody
13 would say we're not talking about crimes, we're talking about
14 discovery, we're talking about normal fights between lawyers.

15 THE COURT: Mr. Keker, please --

16 MR. KEKER: But anyway, we are not going forward with
17 this motion pending when we don't know what your ruling is
18 going to be. If you came back and said there is a waiver --

19 THE COURT: That's fine, Mr. Keker. You will make
20 whatever call you want to make and we are going to be here for
21 a couple of days and you will have a rule on this before this
22 hearing is over. You may very well.

23 MR. KEKER: Will we get a chance to respond, your
24 Honor?

25 THE COURT: Of course you will get a chance to

D4gdche1

Hearing

1 respond.

2 MR. KEKER: Our response would be due -- I mean, this
3 was filed -- they've become the masters of these midnight
4 filings.

5 THE COURT: Mr. Kicker, you are both masters of it,
6 believe me you are.

7 MR. KEKER: We are not as good as they are. Whatever,
8 your Honor.

9 THE COURT: It is a close contest, at any rate.

10 MR. KEKER: You know our position and we are going to
11 stick with it, and I have a couple requests. I would like to
12 have an opportunity to object to the hearing going forward, and
13 I would like to have an opportunity to make an opening
14 statement if the hearing does go forward. And I'm telling you
15 in advance that neither Mr. Donziger nor I will testify --

16 THE COURT: Here is what we are going to do.

17 You have objected. OK. Fair enough, you have
18 objected. Insofar as an opening statement is concerned, I have
19 no need for it from either side. There will be no opening
20 statements. This hearing will be approximately 15 hours of
21 testimony in total, or less. Since you have declined by
22 invitation to reach an agreement, at least as far as I can
23 tell, as to the allocation of time, you have seven-and-a-half
24 hours for the plaintiff and seven-and-a-half hours for the
25 defense, or less, as you choose.

D4gdche1

Hearing

1 Whatever party is examining has the clock running
2 against him, and any argument or colloquy that I think was
3 unnecessary or an inappropriate effort to delay is going to
4 come out of the time of whoever engages in it.

5 That's where we are, and so we will begin.

6 Let me just make sure I didn't have anything else on
7 my checklist here.

8 (Pause)

9 Oh, yes, there is one more thing.

10 MR. SMYSER: Your Honor, excuse me.

11 For the record, the LAPs adopts the objections made by
12 Mr. Keker.

13 THE COURT: I never had any doubt. Thank you.

14 Now, the documents sought in Chevron's motion, docket
15 item 1023, "E-mail exchange on or about October 9, 2012,"
16 Mr. Smyser, where physically are the documents?

17 MR. SMYSER: The documents are in our office, your
18 Honor. We have a thumb drive which may have some of the
19 documents on them.

20 THE COURT: I direct you to have them in court no
21 later than 2 o'clock, and to have them here throughout the
22 proceeding. In case I order their production, there will be no
23 delay.

24 With respect to the documents that are the subject of
25 the motion that Mr. Keker was just talking about, where are

D4gdche1

Hearing

1 those documents physically?

2 MR. SMYSER: That's a much more difficult question to
3 answer, your Honor. For instance, they seek passports from
4 individuals, including my passport, which is being renewed by
5 the United States government now. I have a photocopy of my
6 passport. There are a variety of documents sought. It is not
7 a single e-mail, and those documents I assume are in our
8 office.

9 THE COURT: What is the volume?

10 MR. SMYSER: That's what I assume.

11 THE COURT: What is the volume?

12 MR. SMYSER: I am not sure right now, your Honor.

13 THE COURT: Mr. Keker --

14 MR. SMYSER: They are asking for all the e-mails
15 regarding discovery. I don't know.

16 THE COURT: They are not asking for all e-mails
17 regarding discovery.

18 MR. SMYSER: I just heard Mr. Mastro say that what is
19 involved is our e-mail correspondence with counsel in Ecuador
20 regarding discovery and production of documents.

21 THE COURT: Do you want to respond to that,
22 Mr. Mastro? I take it that is not what you asked for? It is
23 much broader than what you asked for, isn't it?

24 MR. MASTRO: It is, your Honor. What we are asking
25 for, direct exchanges about the obligation to produce the

D4gdche1

Hearing

1 documents here and what the Ecuadorians were asked and what
2 they responded. It is intended to be very targeted, your
3 Honor. And also about the litigation and how it was initiated
4 and what communications there were about that Ecuadorian
5 litigation.

6 THE COURT: Oh, for God's sake. We are not going
7 anywhere with that in connection with this proceeding.

8 MR. MASTRO: OK. I understand.

9 THE COURT: OK. Mr. Keker, it is off the table for
10 now -- not on the merits, but because I want to proceed with
11 this hearing -- and without prejudice to everybody's rights
12 going forward concerning those documents.

13 MR. KEKER: Do we have to respond? I would hope we
14 don't have to respond within 48 hours to their motion. Can we
15 just forget about their motion and they can make a fuss later
16 about whatever they want to?

17 THE COURT: You can't forget about it but I will think
18 about your response time.

19 MR. MASTRO: Your Honor, just to be clear. They have
20 put in declarations where they have said that their documentary
21 communications were very limited about that case.

22 THE COURT: Let's just see where we get here.

23 MR. MASTRO: No problem, your Honor. Thank you, your
24 Honor.

25 Your Honor, before we begin, I just wanted to raise

D4gdche1

Hearing

1 one question about in the normal practice obviously witnesses
2 who are going to testify in a hearing wouldn't be present while
3 others are testifying. This is an unusual circumstance with
4 lawyers involved. So I just wanted to know how your Honor
5 wanted to proceed in that regard.

6 Some of the lawyers are more junior lawyers who are
7 not lead counsel who will be called, like Mr. Stewart. I don't
8 know how your Honor wants to proceed in that regard.

9 THE COURT: I am not going to invoke the rule as to
10 the lawyers.

11 MR. MASTRO: No problem, your Honor.

12 THE COURT: And apropos of that last point, if in the
13 course of the examination there is some specific document that
14 becomes a subject of the discussion and there is a request for
15 production, I'll deal with that specifically, or not, but I
16 will at least consider it.

17 MR. MASTRO: Sure.

18 THE COURT: The other thing to be said as a
19 preliminary matter, and then we'll begin the testimony, is that
20 all witnesses who were identified in the witness list are to
21 remain subject to call and recall until I close this hearing
22 and are not to leave New York until that occurs, because,
23 obviously, things may unfold here in a nonlinear fashion and
24 nobody is going to be excused until it is over.

25 OK. First witness.

D4gdche1

Hearing

1 MR. KEKER: Your Honor, one clarification.

2 It is not your intention to rule on their crime fraud
3 motion, is that -- do I understand that correctly? Because we
4 can go forward. If you are not going to rule on it, fine,
5 we'll go.

6 THE COURT: I have said exactly what I intend to say
7 on it and I'm not saying any more. OK? Let's go.

8 MR. KEKER: I'm sorry, your Honor. I --

9 THE COURT: Which part of that wasn't clear?

10 MR. KEKER: The part that when you say -- it was clear
11 that you say you are not going to say any more, but you haven't
12 dealt -- you haven't given the answer to the thing that was
13 bothering me --

14 THE COURT: Yes, I know. I have not given you the
15 advisory opinion that you've asked for --

16 MR. KEKER: It wasn't an advisory opinion.

17 THE COURT: -- that may or may not some day be
18 relevant. I have not done that.

19 MR. KEKER: I am not asking for that.

20 THE COURT: Mr. Keker, I understand your point. Have
21 a seat, please.

22 Call your first witness, Mr. Mastro.

23 MR. MASTRO: Your Honor, Chevron calls Steven
24 Donziger.

25 MR. KEKER: Your Honor, may I be heard before?

D4gdche1

Hearing

1 I am happy to have him testify if you were not
2 planning to rule on the crime fraud motion that Chevron
3 brought. If you are planning to rule on it, I'm going to
4 advise him not to testify.

5 THE COURT: Mr. Keker, I have not even completely read
6 it. I have made clear to you that, from what I understand,
7 that motion, if I reach it, may be disposed of on grounds that
8 have nothing to do with the crime fraud exception.

9 MR. KEKER: Thank you, your Honor.

10 THE COURT: And further interruptions of that sort are
11 coming out of your time.

12 STEVEN DONZIGER,

13 called as a witness by the plaintiff,

14 having been duly sworn, testified as follows:

15 THE CLERK: Thank you. Please be seated.

16 Please state your name for the record.

17 THE WITNESS: Steven Donziger. S-t-e-v-e-n
18 D-o-n-z-i-g-e-r.

19 THE COURT: Proceed, counsel.

20 MR. MASTRO: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. MASTRO:

23 Q. Mr. Donziger, you are aware, are you not, that on June 7,
24 2012, Chevron served its first request for production of
25 documents on you and your counsel?

D4gdche1

Donziger - direct

1 A. I am aware it was about that time, not the specific date.

2 Q. And, sir, am I correct that since that time you have made
3 seven separate trips to Ecuador?

4 A. I don't know the exact number but I go to Ecuador
5 frequently and regularly.

6 Q. About once a month you go to Ecuador, correct, sir?

7 A. Roughly, yes.

8 Q. And am I correct that when you go to Ecuador, you go to the
9 law offices of local counsel in Quito, correct?

10 A. Correct.

11 Q. Those law offices are located at what's called Selva Viva
12 headquarters, correct, sir?

13 A. Yes.

14 Q. And those local lawyers who you visit with there at Selva
15 Viva headquarters when you go on these monthly trips to Ecuador
16 are Pablo Fajardo, correct?

17 A. Yes.

18 Q. Julio Prieto, correct?

19 A. Not necessarily, no.

20 Q. But he is one of the people whose offices are there,
21 correct?

22 A. No.

23 Q. How about Mr. Saenz, is he someone you meet with there?

24 A. Yes.

25 Q. And then Mr. Yanza, not a lawyer but associated with the

D4gdche1

Donziger - direct

1 Amazon Defense Front, the people at the front table, correct?

2 A. Yes.

3 Q. Now, sir, since the time that Chevron served its first
4 request for production of documents, have you personally spoken
5 with Mr. Fajardo and asked him to produce documents in Ecuador
6 responsive to Chevron's first request for documents?

7 MR. KEKER: Objection, your Honor. Attorney-client
8 privilege.

9 THE COURT: Overruled.

10 MR. KEKER: And work product. They're co-counsel for
11 plaintiffs that they both represent.

12 THE COURT: At the moment it calls for a yes or no.
13 Overruled.

14 A. Yes.

15 Q. How many times have you spoken to Mr. Fajardo about that
16 subject?

17 A. I think once, maybe twice.

18 Q. When was the first time you spoke to him about that
19 subject, producing Ecuadorian documents at your local counsel's
20 law offices in response to Chevron's first request for
21 production of documents?

22 A. Several weeks ago.

23 Q. Several weeks ago being since March?

24 A. Umm, I don't recall the specific date. It was a while
25 back.

D4gdche1

Donziger - direct

1 Q. The last time you were in Ecuador was in late
2 February/early March, sir?

3 A. Umm. It was the period of time when I think that your side
4 produced a photo taken of me in a hotel, whenever that was.
5 That was my last trip.

6 Q. That was from February 26th to March the 2nd, correct, sir?

7 A. I don't know the exact dates.

8 THE COURT: Is that about when it was?

9 THE WITNESS: Yes.

10 Q. Did you speak to Mr. Fajardo at that time for the first
11 time about producing documents in response to Chevron's request
12 for documents?

13 A. No.

14 Q. Was it before then?

15 A. Yes.

16 Q. Was the first time you spoke to Mr. Fajardo about producing
17 Ecuadorian documents, in response to Chevron's request for
18 documents, after the Ecuadorian Court had entered an order in
19 the Cordova case?

20 A. I believe it was before that time.

21 Q. How much before then was it, sir?

22 A. It was sometime after my attorneys called this issue to my
23 attention, and as a general matter I asked my attorneys to
24 write a letter on my behalf. But I did have one or maybe two
25 conversations. I don't know, it was, you know, I would say

D4gdchel

Donziger - direct

1 weeks before that time.

2 Q. You said you asked Mr. Fajardo for a letter?

3 A. No. I asked my attorneys to write a letter to Mr. Fajardo
4 requesting the documents on my behalf.

5 Q. Just to clarify the timeframe.

6 Your first conversation with Mr. Fajardo about
7 producing Ecuadorian documents, in response to Chevron's
8 document request, was after Judge Kaplan had granted Chevron's
9 motion to compel production of those Ecuadorian documents on
10 February 13th, 2013, correct?

11 A. That's not my testimony, sir.

12 Q. I'm asking you whether it was, sir.

13 A. No. It was well before then.

14 Q. And you asked your attorneys to send Mr. Fajardo a letter,
15 and you told Mr. Fajardo that that's what was going to happen?

16 A. No.

17 Q. I just want to clarify, sir.

18 You said the first conversation that you had with
19 Mr. Fajardo was about your attorneys sending him a letter
20 requesting the documents?

21 A. No.

22 Q. What was the substance of the first conversation you had
23 with Mr. Fajardo?

24 MR. KEKER: The same objection, your Honor. Work
25 product.

D4gdche1

Donziger - direct

1 THE COURT: What is the objection?

2 MR. KEKER: Work product, and attorney-client
3 privilege. We believe it covers co-counsel's communications.
4 I know you don't, but it is at least work product.

5 THE COURT: Mr. Mastro?

6 MR. MASTRO: Your Honor, I asked the substance, the
7 subject matter of the conversation. I believe he can say what
8 the subject matter of the conversation was since he is not
9 actually specifying exactly when he had the conversation.

10 THE COURT: Overruled.

11 MR. KEKER: That wasn't the question, your Honor. He
12 asked for the substance of the conversation. "What did you
13 say?"

14 THE COURT: That is correct, Mr. Keker.

15 Do you want to rephrase the question, Mr. Mastro.

16 BY MR. MASTRO:

17 Q. What was the subject matter in the first conversation you
18 had with Mr. Fajardo about producing Ecuadorian documents in
19 response to Chevron's request for production of documents?

20 A. That was the topic we talked about, Chevron's request for
21 documents.

22 Q. Give me your best estimate of when you had that first
23 conversation.

24 A. It was at least a few weeks before my attorneys sent
25 Mr. Fajardo a letter making the same request.

D4gdche1

Donziger - direct

1 Q. Was it after Chevron had moved to compel the production of
2 Ecuadorian documents in response to its first request for
3 production of documents?

4 A. If you could tell me the date that you moved to compel, I
5 could answer that.

6 Q. Was it after August 13th, 2012, when Chevron moved to
7 compel production of Ecuadorian documents in response to its
8 first request for documents?

9 A. I don't know for sure, but it was sometime between the time
10 the issue first came up and the time that my attorneys sent a
11 letter to Mr. Fajardo. Several weeks before the letter was
12 sent but I don't know exactly. If I had to roughly estimate,
13 maybe the fall of that year.

14 Q. Sir, between the time that Chevron served the first request
15 for documents and the time that Chevron moved to compel
16 production of Ecuadorian documents on August 13th, 2013, can
17 you recall any conversation you had with anyone in Ecuador
18 about producing Ecuadorian documents in response to Chevron's
19 first request for documents?

20 A. As I testified, I recall having one or two conversations,
21 but I don't know if they were in those dates that you just
22 mentioned.

23 Q. You knew when Chevron served its first request for
24 documents, from the instructions in that document request, that
25 Chevron was seeking documents from the files of Mr. Fajardo,

D4gdchel

Donziger - direct

1 Mr. Prieto, Mr. Saenz, Mr. Yanza and the Front, correct, sir?

2 A. There came a point in time when I knew that. I don't know
3 when that exactly was.

4 Q. And did you discuss with your attorneys whether you were
5 going to produce documents from those files?

6 MR. KEKER: Objection. Attorney-client privilege.

7 THE COURT: Overruled. It is a "yes" or "no."

8 A. Yes.

9 Q. Did you know that your attorneys would tell Chevron's
10 attorneys that you would not be producing any documents from
11 Ecuador before Chevron moved to compel?

12 A. Sir, to clarify, I don't have --

13 Q. It is a "yes" or "no," sir. Did you know that?

14 A. Did I know what?

15 Q. Did you know, before Chevron had to move to compel on
16 August 13th, 2012, that your attorneys had told Chevron you
17 wouldn't be producing any documents from your Ecuadorian
18 counsel?

19 MR. KEKER: I object. No foundation. I think that's
20 false.

21 THE COURT: Overruled. He can answer it.

22 A. I never had documents to produce, so the discussions with
23 my attorney centered on that fundamental fact.

24 Q. When you go to Selva Viva headquarters once a month, do you
25 have access to the files there?

D4gdche1

Donziger - direct

1 A. There are no files at the Selva Viva headquarters other
2 than files kept by individual attorneys.

3 Q. Has Mr. Fajardo ever denied you access to looking at the
4 case files on this case when you have been in Quito?

5 A. I don't recall. I do not ask Mr. Fajardo to look at his
6 files. Sometimes he offers me files or court documents to look
7 at, but generally I do not get involved in the day-to-day
8 aspects of the Ecuador litigation in Ecuador.

9 Q. Can you name a single time when you have asked Mr. Fajardo
10 for documents --

11 THE COURT: Use the lectern, Mr. Mastro.

12 MR. MASTRO: Sorry.

13 Q. -- other than the request that you say you discussed with
14 Mr. Fajardo once or twice and that your counsel wrote to him
15 once about producing Ecuadorian documents in this litigation,
16 can you name me a single time ever when Mr. Fajardo denied you
17 access to documents in Ecuador?

18 A. He's always denied me access to documents if they were for
19 the purpose of U.S. litigation.

20 Q. Sir --

21 A. I'm his co-counsel --

22 Q. Sir, it is a "yes" or "no" question.

23 MR. KEKER: It wasn't a "yes" or "no" question. Can
24 he answer it, your Honor, and not be interrupted?

25 THE COURT: He had answered. We were getting on to a

D4gdche1

Donziger - direct

1 speech.

2 MR. MASTRO: OK.

3 THE COURT: You'll have an opportunity to question
4 him.

5 BY MR. MASTRO:

6 Q. Mr. Donziger, is it your testimony that when you have
7 requested documents from Mr. Fajardo in connection with U.S.
8 litigations, he has denied you access to those documents?

9 MR. KEKER: I object as to form.

10 THE COURT: Overruled.

11 A. For purposes of your motion in this litigation, yes.

12 Q. That's the only motion -- strike that.

13 Other than in connection with this motion to compel
14 production of documents in Ecuador in this litigation, is there
15 any other time when Mr. Fajardo has denied you access to
16 documents when you've requested them from Ecuador?

17 A. Not that I can recall.

18 Q. Isn't it a fact that when you needed powers of attorney to
19 produce in connection with the 1782 litigations in America, you
20 requested them of Mr. Fajardo in Ecuador, and he not only
21 obtained them, he produced them by PDF to you within two
22 months, correct, sir?

23 A. I don't recall the dates. I did request powers of attorney
24 so we could hire local counsel to deal with this --

25 Q. And you got those in short order from Mr. Fajardo as soon

D4gdche1

Donziger - direct

1 as you requested them, didn't you, sir, yes or no?

2 A. I got them at some point. Yes.

3 Q. Thank you. Now, Mr. Donziger, don't you review drafts of
4 pleadings that are filed in Ecuador?

5 A. I do but infrequently, not generally.

6 Q. You review the drafts and comment on them, correct?

7 A. Generally, no, I don't.

8 Q. It's your testimony that you don't review drafts of what's
9 drafted in Ecuador?

10 A. It is my testimony, as I already testified in my
11 depositions, that as a general matter I do not review pleadings
12 in Ecuador before they are filed. Sometimes I do but
13 generally --

14 Q. Did you review the comment on the Alegato --

15 MR. KEKER: Excuse me. Can he finish rather than cut
16 him off and yell at him?

17 THE COURT: The only yelling I heard was not from
18 Mr. Mastro.

19 MR. MASTRO: Thank you, your Honor.

20 MR. KEKER: Then, your Honor, you should have listened
21 to --

22 THE COURT: Mr. Keker, I am going to run this
23 courtroom and you are not going to tell me how.

24 MR. MASTRO: Yes, sir. Could he finish his answer
25 before Mr. Mastro interrupts him, please?

D4gdche1

Donziger - direct

1 THE COURT: I appreciate the tone of your request.

2 Let's have the question reread and have the witness'
3 answer.

4 (Pause)

5 MR. MASTRO: Your Honor, I am happy to move on and ask
6 a more specific question.

7 THE COURT: OK. If you want to go on, go on.

8 BY MR. MASTRO:

9 Q. Mr. Donziger, isn't it a fact that you reviewed drafts of
10 the Alegato that was submitted in the Ecuadorian litigation?

11 A. I reviewed english language drafts that were drafted, I
12 believe, in the United States.

13 Q. Isn't it a fact, sir, that you have -- strike that.

14 Mr. Donziger, isn't it a fact that when you had to
15 respond to the subpoena in the 1782 action that was brought
16 against you, that you requested documents from Ecuadorian
17 counsel and you received those documents?

18 MR. KEKER: Objection, your Honor. Outside the scope
19 of your Order. You have said the taking of evidence will be
20 limited to the following issues, and the 1782 proceeding --

21 THE COURT: Listen, one of them is whether this
22 gentleman has practical control over the documents in Ecuador.
23 And it seems to me abundantly clear that whether he has in the
24 past requested documents from Ecuador and received them on
25 request goes directly to that issue. Overruled.

D4gdche1

Donziger - direct

1 A. If I remember correctly, I --

2 Q. It is a "yes" or a "no," sir.

3 A. Sir, I can't answer yes or no.

4 If I remember correctly, I saw documents that were my
5 documents in the Quito office, not Mr. Fajardo's documents, and
6 I was able to come up with a handful of documents that were
7 down there that I produced.

8 Q. Do you recall testifying that -- at your deposition that
9 you gathered materials responsive to the subpoena from the law
10 office in Ecuador?

11 THE COURT: Mr. Mastro, if you are going to confront a
12 witness with a deposition, I would like you to read the
13 relevant question and answer and then put a question.

14 MR. MASTRO: Certainly, your Honor.

15 THE COURT: Instead of getting involved in a whole
16 waste of time about the accuracy of summaries.

17 MR. MASTRO: Certainly, your Honor.

18 THE COURT: Back to the lectern, Mr. Mastro.

19 BY MR. MASTRO:

20 Q. Mr. Donziger, in your 1782 proceeding, did you contact the
21 law office in Ecuador and ask Erica Torres to gather materials
22 responsive to the subpoena and ship them to you? Yes or no?

23 A. Your Honor, I'm sorry, is that what you are reading, from
24 the deposition, or am I supposed to answer that as a question.

25 MR. MASTRO: It is a question.

D4gdche1

Donziger - direct

1 THE COURT: It is a question.

2 A. I made a request to somebody in that office, I don't
3 remember who --

4 Q. Thank you.

5 THE COURT: Let him finish that answer, Mr. Mastro.

6 MR. MASTRO: Certainly, your Honor.

7 A. -- for documents. My documents.

8 (Continued on next page)

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D4GJCHE2

Donziger - direct

1 BY MR. MASTRO:

2 Q. Sir, and she shipped those documents to you, correct?

3 A. I believe so, yes.

4 Q. And am I correct that you asked your co-counsel in Ecuador
5 whether they could find any of your old flash drives or thumb
6 drives?

7 A. I believe that I did make that request, yes.

8 Q. And you asked your co-counsel in Ecuador to help you in any
9 way identify responsive documents to the subpoenas, 1782
10 subpoenas, that were there but you no longer had in the United
11 States, correct?

12 A. That's correct, as related to my documents.

13 Q. And they provided you with the documents responsive to the
14 subpoena, correct, sir?

15 A. That is correct, related to my documents.

16 Q. Mr. Donziger, am I correct that Mr. Fajardo has an
17 obligation under his retainer agreement to give you access to
18 his files in Ecuador?

19 A. I haven't reviewed the retainer agreement in some time. I
20 do know that Mr. Fajardo's view is that responding to your
21 document request in this case would violate Ecuador law.

22 Q. That wasn't the question, sir. A simple question.

23 Am I correct that Mr. Fajardo's retention agreement
24 requires him to give you access to case files in Ecuador, yes
25 or no?

D4GJCHE2

Donziger - direct

1 A. I don't know.

2 Q. I just want to make this crystal clear because we're going
3 to come back to that.

4 MR. KEKER: Objection to the preamble and move to
5 strike.

6 THE COURT: Yes, sustained.

7 BY MR. MASTRO:

8 Q. You said you had one or two conversations with Mr. Fajardo
9 about producing documents from the Ecuadorian files in response
10 to Chevron's request for document production here, correct?

11 MR. KEKER: Objection to form of the question and move
12 to strike.

13 THE COURT: Overruled. I don't think there is
14 anything wrong with it from that point of view.

15 A. Yes.

16 BY MR. MASTRO:

17 Q. Did you have any conversations ever with Mr. Fajardo about
18 producing Ecuadorian documents?

19 A. No.

20 Q. Did you ever have any conversations ever with Mr. Saenz
21 about producing Ecuadorian documents in response to Chevron's
22 request for document production in this case?

23 A. I don't recall, but the letter my attorney sent, in my
24 mind, covered requests to all of those individuals on the legal
25 team.

D4GJCHE2

Donziger - direct

1 Q. Sir, I am just asking about your conversations.

2 A. I don't recall.

3 Q. Did you ever have any conversations with Mr. Yanza about
4 producing documents responsive to Chevron's document request in
5 this case from Ecuadorian files?

6 A. I don't believe so.

7 Q. So the only person in Ecuador you ever had any
8 conversations about producing documents responsive to Chevron's
9 document request in this case was Mr. Fajardo, correct?

10 A. That's correct, but he has authority over those other
11 individuals.

12 Q. And you say you had one or two conversations with
13 Mr. Fajardo on that subject, correct?

14 A. Yes.

15 Q. You say you think the first of those was sometime in the
16 fall of 2012 or later, correct, sir?

17 A. As I said, I don't remember the specific date. That was a
18 very rough estimate or sometime after you filed papers seeking
19 them and sometime well before my attorney sent the letter.

20 Q. It was after we moved to compel on August 13, 2012, but
21 before your attorney wrote to Mr. Fajardo on February 14th,
22 2013, correct, sir?

23 A. That was not my testimony, sir. My testimony was sometime
24 between the time that your side filed your initial motion
25 seeking the documents and the time that my attorneys sent a

D4GJCHE2

Donziger - direct

1 letter to Mr. Fajardo, but I will say, as I have testified, it
2 was at least several weeks before my attorney sent that letter,
3 but I don't know exactly when.

4 Q. Do you have any record that would reflect when you had that
5 conversation?

6 A. No.

7 Q. Sir, let me ask you some questions about Mr. Fajardo's
8 retention agreement and his obligations under that agreement?

9 THE COURT: Is that an exhibit on this motion or was
10 it also in the record?

11 MR. MASTRO: Your Honor, it is Exhibit 1106. It is a
12 docket entry No. 355-32. We'll mark it as hearing Exhibit No.
13 1 and hand it up to the witness.

14 MR. KEKER: Could we have a copy as well, your Honor?

15 THE COURT: Do you have a copy, Mr. Mastro?

16 MR. MASTRO: Yes. It is being handed out.

17 (Pause)

18 THE COURT: Do you have a copy for me, Mr. Mastro?

19 MR. MASTRO: Yes.

20 THE COURT: You can use the electronics there, Mr.
21 Mastro if you want.

22 MR. MASTRO: Thank your Honor.

23 BY MR. MASTRO:

24 Q. Mr. Donziger, am I correct that this is a copy of
25 Mr. Fajardo's retainer agreement, dated January 5, 2011?

D4GJCHE2

Donziger - direct

1 A. I don't know. I don't have a copy of it. I am looking at
2 a little bit of it on the screen. Can I get a hard copy,
3 please?

4 THE COURT: I think he handed it to you?

5 THE WITNESS: No, nobody handed me a hard copy.

6 THE COURT: Do you have it now, Mr. Donziger?

7 THE WITNESS: Yes.

8 (Pause)

9 BY MR. MASTRO:

10 Q. Mr. Donziger, am I correct the reference here to the lawyer
11 is to Mr. Fajardo, correct?

12 MR. KEKER: Objection to having him interpret a
13 document that is not his. We don't have any objection to you
14 looking at it and considering it as evidence. He can't
15 interpret this agreement any better than the rest of us can.

16 THE COURT: Give me a moment.

17 (Pause)

18 THE COURT: Well, I'll sustain the objection just as
19 to form, Mr. Mastro. It is perfectly obvious the lawyer is
20 Mr. Fajardo. He signed it in that capacity -- or at least
21 somebody did with his name.

22 MR. MASTRO: Okay, your Honor, I'll move on.

23 BY MR. MASTRO:

24 Q. Mr. Donziger, you're described here as the plaintiff's U.S.
25 representative, correct?

D4GJCHE2

Donziger - direct

1 A. Can you please direct me to where you're reading from?

2 Q. The fourth whereas clause on Page 1.

3 A. Can you repeat the question, please.

4 Q. You are described here as the plaintiff's U.S.
5 representative, correct, sir?

6 A. Yes.

7 Q. And also with Mr. Yanza as other plaintiff's
8 representatives, correct, the same paragraph, sir?

9 THE COURT: Look, Mr. Mastro, I can read it.

10 MR. MASTRO: I understand.

11 BY MR. MASTRO:

12 Q. Am I correct, Mr. Donziger, that Mr. Fajardo was required
13 under this agreement to cooperate with you and Mr. Yanza in
14 connection with the various litigations in which your clients
15 were involved?

16 MR. KEKER: Objection; mischaracterizes the document
17 and calls for a legal conclusion. The court can read this as
18 well as the rest of us. It says what it says.

19 THE COURT: Well, yes, of course it says what it says,
20 but at least if you call his attention to what you're referring
21 to, Mr. Mastro, I am going to allow it.

22 MR. KEKER: I am not sure it has been established he
23 has ever seen it before, your Honor.

24 THE COURT: I am sure you'll ask him that, Mr. Keker,
25 if Mr. Mastro doesn't.

D4GJCHE2

Donziger - direct

1 BY MR. MASTRO:

2 Q. Mr. Donziger, am I correct that this is the operative
3 agreement that defines Pablo Fajardo's retention in connection
4 with the various litigations involving the Aguinda plaintiffs?

5 A. No. It described in my retention, not his.

6 Q. This is the retention agreement that he signed?

7 A. I am confused. There is a lot of retention agreements that
8 have been signed. I don't remember which one this is exactly,
9 and without really taking the time to read it, I don't know the
10 answer to that question.

11 Q. Okay. Mr. Donziger, am I correct that Mr. Fajardo's
12 retention agreement provided that he will provide the other
13 plaintiff's representatives, including yourself, with access to
14 the plaintiff's files at such reasonable times as may be
15 requested by the other plaintiff's representatives, including
16 yourself?

17 A. Well, not if it violated Ecuador law, no.

18 Q. Is that what this agreement provides, that he has to
19 provide you with access to the plaintiff's files at such
20 reasonable times as may be requested by you?

21 A. I don't know. If you could point me to someplace in the
22 agreement, I might be able to answer your question.

23 Q. Page 5 of the retainer agreement, sir. Do you see there
24 where it expressly says on Page 5, "The lawyer will provide the
25 other plaintiff's representatives with access to the

D4GJCHE2

Donziger - direct

1 plaintiff's files at such reasonable times as may be requested
2 by the other plaintiff's representatives."

3 Do you see that, sir?

4 A. Yes.

5 Q. Did Mr. Fajardo honor that contractual obligation to you to
6 provide you access to the plaintiff's files at such reasonable
7 times as you may have requested?

8 A. In this instance, no, because he felt like it would violate
9 Ecuadorian law.

10 Q. Sir --

11 MR. KEKER: Excuse me. I am sorry, Mr. Mastro. May I
12 make an objection. Could he finish the answer?

13 THE COURT: I thought he did.

14 MR. KEKER: No, he hasn't. He was still talking.

15 THE COURT: The answer was, "In this instance, no,
16 because he felt like it would violate Ecuadorian law.

17 Actually everything after "no" was unresponsive
18 anyway, but I think you completed your answer, didn't you,
19 Mr. Donziger?

20 THE WITNESS: He talked over me, but I got the words
21 out.

22 BY MR. MASTRO:

23 Q. Is there any other instance in your experience where
24 Mr. Fajardo did not comply with his contractual obligation to
25 you to provide you access to the plaintiff's files at such

D4GJCHE2

Donziger - direct

1 reasonable times as you may have requested?

2 A. As I testified already today --

3 Q. A yes or no?

4 A. Not that I can recall. I already testified to that, sir.

5 Q. Thank you.

6 Sir, am I also correct that Mr. Fajardo was
7 contractual obligated to you to promptly respond to any
8 reasonable request for information received by you?

9 A. I don't know. I mean based on this document?

10 Q. Look at Page 4, do you see where it says, "The lawyer shall
11 promptly respond to any reasonable request for information
12 received from one of the other plaintiff's representatives"?

13 Do you see that, sir?

14 A. No. Where? I am looking at Page 4.

15 THE COURT: Paragraph 4.

16 BY MR. MASTRO:

17 Q. Paragraph 4, do you see that, sir?

18 A. I see it.

19 Q. Other than in this instance responding to Chevron's motion
20 for Ecuadorian documents as part of its document request, is
21 there any other time that you can recall where Mr. Fajardo
22 didn't promptly respond to any reasonable request for
23 information he received from you?

24 A. Yes.

25 Q. How many other times did he not reasonably respond to you?

D4GJCHE2

Donziger - direct

1 A. Well, I would say in the last two years after I completed
2 my production in the 1782 process, he was very skeptical of
3 giving me documents because of what happened in that case. We
4 had to turn over the entire case file based on a waiver. At
5 that point he often would not share documents with me out of
6 fear they would be produced to Chevron.

7 Q. Sir, did you ever attempt to enforce your rights under this
8 contract, that a prompt response to your request for
9 information and to have access to the plaintiff's files, did
10 you ever attempt to enforce your rights under this contract
11 vis-a-vis Mr. Fajardo?

12 MR. KEKER: Objection, your Honor, to the form of the
13 question. It calls for a legal conclusion and there is nothing
14 to establish he has any rights, he has any rights under this
15 contract. He is not a party to the contract.

16 THE COURT: Overruled.

17 MR. MASTRO: I will rephrase the question, your Honor.
18 BY MR. MASTRO:

19 Q. Mr. Donziger, at any point did you say to Mr. Fajardo, "I'm
20 entitled to a prompt response to my reasonable information
21 requests, so send me the information I am requesting?"

22 MR. KEKER: Objection.

23 BY MR. MASTRO:

24 Q. Did you ever say that to Mr. Fajardo after you got
25 Chevron's request for production of documents from Ecuador?

D4GJCHE2

Donziger - direct

1 MR. KEKER: Attorney-client privilege, work products,
2 calling for substance of the conversation between them.

3 THE COURT: Overruled.

4 MR. KEKER: Objection.

5 THE COURT: Overruled.

6 A. When I asked Mr. Fajardo for documents, he made it very
7 clear he was not going to turn them over for various reasons,
8 among them to be would be --

9 BY MR. MASTRO:

10 Q. It was a very specific question.

11 THE COURT: Mr. Mastro, you have got to stop that.

12 MR. MASTRO: He is giving speeches, your Honor.

13 THE COURT: And you're shouting down the witness.

14 Let's get on with it.

15 BY MR. MASTRO:

16 Q. Go ahead, Mr. Donziger, is there anything else you want to
17 say?

18 A. I believe I finished my answer.

19 Q. A simple question. Did you ever say to Mr. Fajardo, "I'm
20 entitled to promptly receive information I reasonably request,
21 so I must insist that you produce the Ecuadorian documents to
22 me," did you ever say that to him?

23 A. I asked Mr. Fajardo for documents. He told me he would not
24 produce them for the purposes of this litigation for reasons I
25 have stated --

D4GJCHE2

Donziger - direct

1 Q. You never asked him that, did you?

2 MR. KEKER: Objection.

3 THE COURT: You have interrupted him again, Mr.
4 Mastro.

5 MR. MASTRO: Sorry, your Honor.

6 A. I did not take the language in this agreement and repeat it
7 to him, no, I did not do that.

8 BY MR. MASTRO:

9 Q. Did you ever say to Mr. Fajardo, "I am entitled to access
10 to plaintiff's files in Ecuador and I demand access to those
11 files so I can respond to Chevron's document request in this
12 case," did you ever say that to Mr. Fajardo?

13 A. Sir, I already testified that I asked him for documents. I
14 did not use this language. I asked him for documents. He
15 refused on the grounds I mentioned and other grounds.

16 Q. Did you ever consider bringing suit against Mr. Fajardo in
17 Ecuador to compel him to give you the documents, that he was
18 denying you the access to those documents?

19 A. Absolutely not, I would not do such a thing.

20 Q. Did you ever consider intervening in the Cordova lawsuit to
21 assert your interests in the documents and being able to
22 produce them in this proceeding?

23 A. No.

24 Q. Mr. Donziger, am I also correct that Mr. Fajardo was
25 obligated under this agreement to cooperate and coordinate his

D4GJCHE2

Donziger - direct

1 efforts with you?

2 A. Mr. Fajardo and I generally worked closely together. We
3 still work together, not as closely because of these
4 litigations. I don't know in this agreement where it says
5 that. That is generally how we worked.

6 Q. Am I also correct that Mr. Fajardo was permitted to
7 disclose even confidential information to third parties under
8 this agreement if he was specifically authorized by you as one
9 of the plaintiff's representatives?

10 A. I don't know.

11 Q. Am I also correct that Mr. Fajardo was authorized under
12 this agreement to disclose confidential information to
13 plaintiffs or third parties if legally required to do so?

14 A. Sir, I don't know. I have not reviewed this document in
15 detail before I came in today.

16 Q. Let's go to Page 5 of the document. Do you see there where
17 it says, "the lawyer" -- Mr. Fajardo, correct -- "shall not
18 disclose any confidential information of the plaintiff's to any
19 third party including other clients unless" --

20 A. Sir, where are you reading from exactly, please?

21 Q. I am reading on Page 5 of the document.

22 A. I see it.

23 Q. Thank you.

24 "Unless specifically authorized by the plaintiffs or
25 the other plaintiff's representatives," do you see that, sir?

D4GJCHE2

Donziger - direct

1 A. Yes.

2 Q. And you were one of the other plaintiff's representatives,
3 correct, sir?

4 A. I believe I was. I don't know -- yes, I was U.S.
5 plaintiff's representative.

6 Q. It also says, does it not, that the lawyer should not
7 disclose any confidential information of the plaintiffs to any
8 third parties other than clients unless legally required to do
9 so. Do you see that, sir?

10 A. Yes.

11 Q. It doesn't say they're legally required to do so in
12 Ecuador, correct?

13 A. That's correct.

14 Q. Unless legally required to do so?

15 A. That's correct, it is silent on that point, yes.

16 Q. Judge Kaplan's order legally required production of those
17 documents here, correct?

18 A. Yes, if I could get them, which I couldn't.

19 Q. Did you ever say to Mr. Fajardo, "I authorize you to
20 disclose Ecuadorian case files in the context of the U.S.
21 litigation to Chevron," did you ever say that to Mr. Fajardo?

22 A. Sir, Mr. Fajardo made it clear that it would be --

23 Q. It is a simple yes or no.

24 A. -- against Ecuador law to turn over those documents. I
25 would face imprisonment.

D4GJCHE2

Donziger - direct

1 THE COURT: That is stricken. Answer the question.

2 BY MR. MASTRO:

3 Q. Did you ever say that to Mr. Fajardo, that I want you to
4 turn over confidential information in the Ecuadorian case files
5 to Chevron? Did you ever say that to Mr. Fajardo?

6 A. Absolutely not and I wouldn't.

7 MR. MASTRO: Your Honor, I'd like to turn to
8 Mr. Donziger's retention agreement. That's Exhibit 1106 in the
9 depositions, document number -- I am sorry. It is Exhibit No.
10 1122.

11 THE COURT: 1122 or 1106?

12 MR. MASTRO: 1106 is Fajardo retention agreement.
13 1122 is Donziger, and it is Docket No. 355-37 of the record.
14 We'll mark this as Chevron hearing Exhibit No. 2.

15 (Pause)

16 BY MR. MASTRO:

17 Q. Mr. Donziger, am I correct that that is a copy of your
18 retention agreement, dated January 5, 2011, in connection with
19 the various Aguinda-related litigations?

20 A. Yes.

21 Q. Am I correct you signed this agreement with the other
22 plaintiff's representatives, including Mr. Fajardo, after the
23 crude outtakes had already been ordered produced and many of
24 them filed in the court here, correct?

25 A. Yes.

D4GJCHE2

Donziger - direct

1 Q. And after there had already been a ruling that you waived
2 privilege and your files had to be produced, and many of those
3 files have been publicly filed in the Southern District here,
4 correct?

5 A. Yes.

6 Q. Even after all those events, you entered into this new
7 retainer agreement in January 5, 2011 with Mr. Fajardo and
8 other plaintiff's representatives in connection with the
9 Aguinda-related litigations, correct?

10 A. Yes.

11 Q. Am I also correct that -- strike that.

12 You said earlier that you had not been involved in the
13 day-to-day management of the Aguinda litigation in Ecuador,
14 correct?

15 A. That's correct.

16 Q. Am I also correct under this agreement you are to play a
17 coordinating role in connection with all of the related
18 litigations, Aguinda in Ecuador, existing 1782s and potential
19 future 1782s and enforcement actions, correct, sir?

20 A. The word "coordinated" can be a lot of things. My role was
21 to help bring together a legal team in the U.S. to deal with
22 all the litigation matters your client generated among other
23 things.

24 Q. I simply asked you a question, sir, that in entering into
25 this agreement, you were retained to play a coordinating role

D4GJCHE2

Donziger - direct

1 in connection with the litigation which included Aguinda in
2 Ecuador, existing 1782s and future 1782s, enforcement
3 litigations and other prospective litigations, correct?

4 A. I was to play a coordinating role in a general sense for
5 the various litigations among other people, yes.

6 Q. Thank you.

7 Am I also correct under this agreement, you were
8 retained to exercise overall responsibility for the strategic
9 direction of the litigation and day-to-day management of the
10 litigation?

11 A. I don't know where it says that in this agreement.

12 Q. I am asking you whether you were retained to do that under
13 this agreement?

14 A. Sir, I don't know.

15 Q. Why don't you go to Page 2, 2 B, do you see where it says
16 that the plaintiffs appoint you to act as their U.S.
17 representative, "to exercise overall responsibility for the
18 strategic direction of the litigation and the day-to-day
19 management of the litigation," do you see that, sir?

20 A. Yes.

21 Q. And the litigation defined in the above whereas clauses
22 includes Aguinda in Ecuador, existing 1782s, future 1782s and
23 enforcement proceedings and other future litigations, correct,
24 sir?

25 A. That's what it says, sir.

D4GJCHE2

Donziger - direct

1 Q. Have you played that overall -- have you fulfilled your
2 obligations under this agreement since then?

3 A. Sir, my obligations are what my clients requested I do.
4 This is not an accurate description by any means what I have
5 done since this retainer agreement was signed.

6 Q. Do you consider yourself to have fulfilled your obligations
7 to your clients, the plaintiffs, under this retention
8 agreement, sir?

9 A. Yes, I do.

10 Q. Now, Mr. Donziger, it goes on to say that you have primary
11 responsibility for, "coordinating the overall legal strategy of
12 the plaintiffs to pursue and defend all aspects of the
13 litigation, including without limitation coordinating the
14 United States legal strategy and the Ecuadorian legal
15 strategy," do you see that, sir?

16 A. No, but if it says that, that is not how it actually
17 happened.

18 Q. Is that your contractual obligation under this contract,
19 sir, on Pages 2 and 3 of the contract, 2 B 1?

20 A. I have not read this contract in full before coming in here
21 today. I don't know. As far as I was concerned, my
22 contractual obligation was to do my best to fulfill requests by
23 my clients, to take care of these responsibilities listed in
24 here, but this is a very broad mandate. As it actually
25 happened in practice, the things I was doing were not all the

D4GJCHE2

Donziger - direct

1 things that are mentioned in this contract.

2 Q. Am I correct that you had the contractual right and
3 responsibility to coordinate the overall legal strategy?

4 MR. KEKER: Asked and answered, your Honor.

5 THE COURT: Overruled.

6 A. I had responsibilities all that were outlined in this
7 contract were always subject to client requests, approval and
8 the like, so the things I was doing were not always the things
9 mentioned in the contract and they were usually much more
10 limited in the responsibilities mentioned in the contract.

11 BY MR. MASTRO:

12 Q. Sir, was it in your contractual right and responsibility to
13 coordinate efforts to procure funding or financing for the
14 litigation?

15 MR. KEKER: Objection. This is outside the scope of
16 this hearing. Your order says that we'll deal with those five
17 questions.

18 THE COURT: Yes, I understand that.

19 MR. MASTRO: Your Honor, I will tie it in very
20 quickly.

21 THE COURT: Go ahead, tie it up.

22 THE WITNESS: I am sorry. Could you repeat the
23 question.

24 BY MR. MASTRO:

25 Q. You also had primary responsibility under your retention

D4GJCHE2

Donziger - direct

1 agreement for coordinating the efforts to producer funding or
2 financing for the litigation?

3 A. I did at one time.

4 Q. Am I correct that you have continued out of your accounts
5 since the signing of this agreement to pay Mr. Fajardo and
6 others on the Ecuadorian legal team?

7 A. On occasion I paid small amounts out of my accounts for
8 case expenses, yes.

9 Q. Isn't it correct, sir, you paid Mr. Fajardo \$50,000 in 2011
10 after you signed this retention agreement? Isn't that correct,
11 sir?

12 A. I don't know.

13 Q. You've also paid Mr. Yanza in 2011, correct, out of the
14 accounts you controlled,?

15 A. Sir, I don't know. I paid people from my accounts case
16 expenses including salaries of people in Ecuador from time to
17 time, yes, I have.

18 Q. So you have actually been a person who continues to be
19 responsible after January 5, 2011 for paying some of the salary
20 and expenses of Mr. Fajardo, Mr. Yanza and the other Ecuadorian
21 team, correct?

22 A. I would say it was a shared responsibility. I did the best
23 I could to make sure people were paid. On occasion I paid them
24 out of my own account relatively small amounts compared to
25 overall case expenses.

D4GJCHE2

Donziger - direct

1 Q. Mr. Donziger, am I correct that when you -- am I correct
2 that you have also been responsible for coordinating the hiring
3 of additional attorneys in the case?

4 A. That's not accurate.

5 Q. Am I correct that you are the person who recommended the
6 hiring of Patton Boggs on the case?

7 A. I took a role on behalf of the client as their U.S.
8 representative to seek additional counsel for this case, that I
9 would recommend to the clients, yes, including Patton Boggs.

10 Q. Sir, can you recall what it was on June 28th, 2011 that you
11 were paying Mr. Fajardo \$50,000 from personal savings account
12 of Chase?

13 A. I don't recall specifically other than I can assure you it
14 was related to case expenses in Ecuador.

15 Q. Now, sir, I want to ask you the same questions about
16 Ecuador. Am I correct that since January 1, 2011, you have
17 made 24 trips to Ecuador?

18 A. I don't know how many trips I made.

19 Q. Does that sound approximately right to you, 24 trips?

20 A. Generally, Mr. Mastro, I travel to Ecuador once a month, so
21 that might be a rough approximation.

22 Q. Am I correct that prior to January 2011, you, between 2005
23 and 2010, had 59 trips to Ecuador?

24 A. Sir, I am happy to stipulate to the fact that for many
25 years I have been going to Ecuador once a month. You obviously

D4GJCHE2

Donziger - direct

1 know more about my travels than I do, but I have been going
2 once a month for many years.

3 Q. You have continued to go once a month to Ecuador since
4 January 2011, correct?

5 A. Roughly once a month, maybe a little less frequently than
6 that.

7 Q. Am I correct that since February 1, 2011 when this RICO
8 case was filed, you've made 22 trips to Ecuador?

9 A. Sir, I don't know how many trips I've made. As I
10 previously testified, I travel roughly once a month to Ecuador.

11 Q. You continue to do that since the filing of the RICO
12 action?

13 A. Roughly, yes, maybe a little less frequently as I just
14 testified.

15 Q. In terms of your communications with the Ecuadorian
16 lawyers, you've produced a privilege log in this litigation,
17 correct, sir?

18 A. Yes.

19 Q. In the original privilege log that you produced in this
20 litigation, am I correct that there are over a thousand
21 entries, from January 1, 2011 to July 10, 2012, of
22 communications from Ecuadorian counsel to you?

23 MR. KEKER: Excuse me. The privilege log was produced
24 under protective order which is now being violated by Mr.
25 Mastro. We object to it.

D4GJCHE2

Donziger - direct

1 MR. MASTRO: Your Honor, I am happy to produce however
2 you wanted to. I have not revealed any of the substance of the
3 log other than total numbers. So I did not consider that to be
4 an issue, but I am --

5 THE COURT: Why should that be an issue, Mr. Keker?

6 MR. KEKER: I haven't counted it. I don't know if it
7 is right or wrong. What we have got is a privilege log which
8 was produced under your order, covered by a protective order
9 and now he is chatting about it in open court. That is a
10 violation of the protective order.

11 THE COURT: I don't know. One thing is for sure, I
12 entered no order that says privilege logs are confidential.
13 That is for sure. I entered a protective order that said
14 parties in certain circumstance could designate various things
15 confidential in some circumstances, the precise terms of which
16 I don't have in my memory.

17 MR. KEKER: Nor do I.

18 THE COURT: Okay. So I am asking you as a very
19 practical matter what is the difference when we're talking
20 about how many lines there were for a particular kind of claim?

21 MR. KEKER: This is outside the scope of your order
22 regarding the hearing. I don't know whether he --

23 THE COURT: I don't think it it is outside the scope
24 at all. What counsel is trying to do to show the guy who calls
25 the shots here across-the-board is sitting to my right, it is

D4GJCHE2

Donziger - direct

1 Mr. Donziger, and if he tells Mr. Fajardo that he is to produce
2 the documents, they will be produced.

3 As evidence of that, he is attempting to demonstrate
4 that he is in Ecuador every month or thereabouts, there have
5 been hundreds if not thousands of communications between him
6 and Mr. Fajardo and others there and all the other things we
7 have been watching or listening to. It seems to me it is all
8 relevant. The conclusion ultimately to be drawn I will draw
9 one of these days, but that is the theory of the evidence.

10 So let's just focus on your immediate objection,
11 please, which I understood to be that there is a legitimate
12 interest in having under seal the question of whether it was
13 1200 communications or 900 commissions or 1600 communications
14 or whatever. If there is, I am perfectly amenable to adopting
15 such a position if somebody can explain it to me.

16 MR. KEKER: We designated the confidential
17 communications under a privilege log as under seal and they
18 ought to stay under seal. There is no reason to lift the seal.
19 They're confidential communications which are privileged.

20 THE COURT: Excuse me. Maybe you can enlighten me as
21 to what the confidential communications are?

22 MR. KEKER: I don't know because I don't have the
23 privilege log in front of me. He is up here and you just did
24 it, there is 1600, there is 900, 1200.

25 THE COURT: I didn't just do it, Mr. Keker. I used

D4GJCHE2

Donziger - direct

1 examples that have absolutely no connection to reality because
2 I don't actually know what the reality is.

3 MR. KEKER: My problem is that Mr. Mastro may be doing
4 the same thing, your Honor. I will just leave it at that. I
5 can't believe he is going to know whether or not Mr. Mastro's
6 numbers are accurate, either.

7 THE COURT: Mr. Mastro, do you have a response to Mr.
8 Kekker here on this point?

9 MR. MASTRO: Your Honor, I --

10 THE COURT: Is it designated confidential under the
11 order?

12 MR. MASTRO: Your Honor, the privilege log is
13 something that was designated confidential, but I understood
14 that to be the substance of the individual entries, not
15 cumulative numbers. They've put out, both sets of lawyers have
16 put out to the press how many of our attorneys are listed on
17 the privilege log, and ours is also marked confidential. I
18 didn't consider that to be a violation of the confidentiality
19 of the substantive entries on the log.

20 I am simply trying to convey to the court a simple
21 proposition which is how voluminous the communication has been
22 between Mr. Donziger and the Ecuadorian attorneys every day
23 since January 2011.

24 THE COURT: Look, the most sensible way of dealing
25 with this particular problem is to move on, isn't it, because I

D4GJCHE2

Donziger - direct

1 am certainly entitled to look at it.

2 MR. MASTRO: Correct, your Honor. Right, your Honor.
3 I will be happy to move on.

4 BY MR. MASTRO:

5 Q. Mr. Donziger --

6 THE COURT: If both sides would spend a lot less time
7 thinking about what is going to be in the press, everything
8 would be a lot better in this case.

9 MR. MASTRO: I agree, your Honor. I didn't appreciate
10 how many lawyers from my firm they --

11 THE COURT: Mr. Mastro, believe me I said "both" for a
12 reason.

13 MR. MASTRO: I understand, your Honor.

14 BY MR. MASTRO:

15 Q. Mr. Donziger, would it be fair to say that you have
16 communication with the lawyers in Ecuador virtually every day?

17 A. Yes, I work with them.

18 Q. That you, in fact, exchange several e-mails a day on
19 average with the lawyers in Ecuador, correct?

20 A. It depends on the day. I would say my electronic
21 communication with the lawyers in Ecuador has been greatly
22 diminished in quantity since these actions began in this
23 country.

24 Q. Would it surprise you to know that you exchanged e-mails
25 with lawyers in Ecuador on average three to four times a day?

D4GJCHE2

Donziger - direct

1 A. No, that is not very much given we are all working full
2 time on this case, in my opinion.

3 Q. You're working full time on this case, correct, sir?

4 A. Close to full time.

5 Q. Am I correct you also regularly have phone calls to people
6 in Ecuador?

7 A. On occasion, yes.

8 Q. And that you also have texts with people in Ecuador?

9 A. On rare occasion, yes.

10 Q. And that you travel to Ecuador about once a month, correct?

11 THE COURT: Come on, we are repeating and repeating.

12 MR. MASTRO: I understand that. Your Honor, I am
13 going to try to streamline the rest of the examination, so if
14 we can take a brief break, I will try and expedite the rest of
15 the examination.

16 THE COURT: All right. We'll take a short break,
17 about 10 minutes.

18 (Recess)

19 THE COURT: Okay, let's continue.

20 MR. MASTRO: Thank your Honor.

21 BY MR. MASTRO:

22 Q. Mr. Donziger, you testified this morning that there are
23 times when Mr. Fajardo gives you documents to review, correct?

24 A. Yes.

25 Q. How often would you say Mr. Fajardo gives you documents to

D4GJCHE2

Donziger - direct

1 review?

2 A. Very infrequently.

3 Q. What kind of documents, pleadings, press releases, what
4 kind of documents?

5 A. On occasion a pleading that has been filed, on other
6 occasions a draft of a pleading, that sort of thing but very
7 rarely.

8 Q. When you go to the Selva Viva offices in Quito, the law
9 offices for Pablo Fajardo and other of the Ecuadorian lawyers,
10 do you have an office or a desk you use?

11 A. No.

12 Q. Do you bring your own computer with you?

13 A. Yes.

14 Q. Do you ever work off of the computers there?

15 A. No.

16 Q. Have you ever been denied access to the computers in the
17 Selva Viva office if you needed to look up something there?

18 A. I don't know if I've ever asked. I don't believe I have
19 been denied. I don't believe I have asked for access.

20 Q. Any paper files there, file cabinets, things like that?

21 A. Yes.

22 Q. Have you ever been denied access to look at those paper
23 files at the Selva Viva offices?

24 A. I don't think I have ever requested to look at those other
25 than when I sought my own documents for the purposes of the

D4GJCHE2

Donziger - direct

1 1782 production.

2 Q. You have never been denied access to those files, correct,
3 sir?

4 A. I don't believe I have ever sought access.

5 Q. So you have never been denied, correct?

6 A. That would be correct if I never sought it, yes.

7 Q. Sir, am I correct that the Ecuadorian lawyers have
8 occasionally referred to you as commander?

9 A. It's a term of affection, not a term of description of a
10 hierarchy. That is how I would describe it. Yes, they have
11 referred to me as that.

12 Q. And Mr. Fajardo has sent you documents to review in draft
13 and referred to you in those documents as commander, correct,
14 sir?

15 A. Again I don't know, but if it is, it is a term of
16 affection, not a term I have control over him. That does not
17 mean that if that is what you're suggesting.

18 Q. I am just asking whether Mr. Fajardo has ever sent you
19 documents to review and referred to you in the e-mail conveying
20 the document as commander?

21 A. I don't know.

22 Q. Mr. Donziger, I am going to hand you what we'll mark as
23 Exhibit 3.

24 MR. MASTRO: Your Honor, I should, I know this is not
25 a formal trial, but Exhibits 1 and 2, I would ask they the

D4GJCHE2

Donziger - direct

1 court receive them.

2 THE COURT: 1 and 2 are received without objection.

3 (Plaintiff's Exhibits 1 and 2 received in evidence)

4 BY MR. MASTRO:

5 Q. I am going to show you, Mr. Donziger, what has been marked
6 as Chevron Hearing Exhibit No. 3, and it is Exhibit 1817 A in
7 the record here.

8 A. Thank you.

9 Q. Sir, am I correct this is a December 17th, 2007 e-mail from
10 Pablo Fajardo to you conveying a document that you've requested
11 from an expert in the Ecuadorian case? Am I correct, sir?

12 A. It looks like an e-mail sending me a document that I
13 requested, yes. I don't know what document it is.

14 Q. Am I correct, sir, that Mr. Fajardo refers to you here as
15 commander, correct, sir?

16 A. Yes.

17 Q. Now, that is not the only time that Mr. Fajardo referred to
18 you as commander, is it, sir?

19 A. We would often call each other commandant, which is a term
20 of affection. Roughly it is, "Hey, good buddy."

21 Q. I am simply asking you, sir, a simple yes or no question.

22 A. I already answered the question.

23 Q. Mr. Fajardo --

24 A. Yes.

25 Q. -- would occasionally refer to you as commander, correct,

D4GJCHE2

Donziger - direct

1 sir?

2 A. Yes.

3 Q. Now, sir, am I also correct that Mr. Fajardo would send you
4 important draft documents about the Ecuadorian litigation for
5 your review at your request?

6 A. On occasion, yes.

7 Q. Was he violating Ecuadorian secrecy law when he sent you
8 draft documents from the Ecuadorian case files for you to
9 review?

10 A. I don't believe so, no.

11 Q. So it is okay for him to send you anything that he wanted
12 to in draft form out of the Ecuadorian files, that wouldn't
13 violate Ecuadorian secrecy laws, is that your testimony?

14 A. We were operating under a privilege. That is the
15 difference.

16 Q. The distinction you're making is that anything conveyed by
17 the Ecuadorian lawyers from the case files to you would be
18 privileged, so that wouldn't violate Ecuadorian law even though
19 he was sending it to you here in the United States. Is that
20 your testimony?

21 A. My testimony is there is a very significant distinction
22 between that and asking him to turn over documents for this
23 case which would violate Ecuadorian law.

24 Q. Are you an expert on Ecuadorian law, sir?

25 A. I am not. Based that on what he told me --

D4GJCHE2

Donziger - direct

1 MR. KEKER: Can he finish his answer.

2 THE COURT: Let him finish his answer.

3 BY MR. MASTRO:

4 Q. Is there anything you want to add, Mr. Donziger?

5 A. It is based on what he told me, based on legal analyses
6 what has been done in Ecuador of Ecuadorian law.

7 Q. We're going to come that, sir.

8 MR. KEKER: I move to strike the statement.

9 THE COURT: Overruled.

10 BY MR. MASTRO:

11 Q. Sir, am I correct that in July of 2010 you asked
12 Mr. Fajardo to send you an executive summary of the court case
13 against Chevron in Ecuador in draft form for you to review and
14 comment on?

15 A. I don't recall.

16 Q. I would like to hand the witness what I'll mark as Exhibit
17 No. 4 for this hearing, it is Exhibit 3630 in the record.

18 THE COURT: Thank you.

19 BY MR. MASTRO:

20 Q. Sir, am I correct that this is an e-mail from Pablo Fajardo
21 to you, dated July 22, 2010, conveying to you the memorial
22 final, otherwise entitled executive summary of the court case
23 against Chevron in Ecuador that you had requested he send you?

24 A. Yes.

25 Q. And he immediately responded the same day to your request,

D4GJCHE2

Donziger - direct

1 correct, sir?

2 A. I think that is what the e-mail says.

3 Q. It attaches that executive summary draft, correct, sir?

4 A. This document you just gave me has the executive summary
5 draft attached.

6 Q. Am I correct that when -- strike that.

7 You didn't pull any punches with your Ecuadorian
8 colleagues in ordering them to do things, did you, sir?

9 A. I would often make my opinion heard in forceful terms
10 through the years, yes. I don't know what you're talking about
11 specifically.

12 Q. Am I correct that you wrote to Pablo Fajardo in June 2009
13 and told him that he had to go to Correa to put an end to this
14 S H I T once and for all?

15 A. I don't know. It is quite possible I did tell him that.

16 Q. That is the way you typically would speak to your
17 Ecuadorian co-counsel?

18 A. No.

19 Q. Am I correct that in June 2008, you wrote to Mr. Saenz
20 about a draft motion get this done on time and don't F U C K
21 up, please? Do you remember writing that?

22 A. No.

23 MR. MASTRO: We'll mark as Exhibits 5 and 6.

24 (Pause)

25 MR. MASTRO: Exhibit 5 is in the record. Exhibit

D4GJCHE2

Donziger - direct

1 3618, I am sorry, that is Exhibit 6. It is in the record as
2 Exhibit 3618, and Exhibit 5 is docket entry 9 out of 6. I'll
3 hand this up to the witness and the court now.

4 (Pause)

5 THE COURT: Okay.

6 MR. KEKER: We'll stipulate he used the words S H I T
7 and F U C K in that, we are not contesting.

8 THE COURT: Thank you. That is so stipulated that he
9 used those words, Mr. Mastro.

10 MR. KEKER: In this exhibit.

11 THE COURT: Thank you. That is very helpful.

12 MR. KEKER: I didn't want to say them.

13 BY MR. MASTRO:

14 Q. That was in giving directions to your --

15 THE COURT: I think I remember learning once you're a
16 former Marine, Mr. Keker. I bet you have said them. Would I
17 be right?

18 MR. KEKER: I cannot tell a lie. Yes, I have said
19 them -- in fact, fairly frequently with a lot of adjectives
20 around them.

21 THE COURT: Nor are you alone at the trial Bar.

22 MR. KEKER: Right.

23 BY MR. MASTRO:

24 Q. Mr. Donziger, just to close the loop on this subject, you
25 have used those terms that your counsel just stipulated to in

D4GJCHE2

Donziger - direct

1 giving directions to your Ecuadorian colleagues in connection
2 with litigation efforts, correct, sir?

3 A. I don't accept the premise of the question. I would often
4 urge them to do stuff that I thought needed to be done using
5 cuss words, yes, on occasion.

6 Q. Now, Mr. Donziger, am I correct that Mr. Fajardo has been
7 very responsive to your requests for information in connection
8 with U.S. litigations where you needed testimony or letters,
9 correct?

10 A. I think on occasion I or other counsel on our U.S. team
11 have requested information from him, and subject to his
12 analysis, as I understand it, of his obligations under Ecuador
13 law, he has on occasion responded to those requests.

14 Q. When you needed a declaration in the District of Colorado
15 in the Stratus 1782, it was Mr. Fajardo who gave you that
16 declaration, dated May 5, 2010, correct?

17 A. He gave that to U.S. counsel, yes.

18 Q. You're actually the one who helped with editing it and
19 translating it for him, weren't you?

20 A. I did, yes.

21 Q. That is the declaration where he said Cabrera wasn't an
22 "independent" expert, correct, sir?

23 A. I don't know. I don't have it in front of me.

24 Q. Am I correct that Mr. Fajardo has come to New York --

25 THE COURT: Excuse me for a minute. Was the question

D4GJCHE2

Donziger - direct

1 that is the declaration he said Cabrera was an independent
2 expert or wasn't?

3 MR. MASTRO: Was, your Honor.

4 THE COURT: I think there is a transcript error.

5 BY MR. MASTRO:

6 Q. I said that's the declaration where Mr. Fajardo swore
7 Cabrera was an independent expert.

8 THE COURT: All right. With the question restated in
9 that form, Mr. Donziger, what is your answer?

10 A. It is the same. I don't know the answer to that question.
11 I haven't reviewed that affidavit for quite some time.

12 THE COURT: Let's proceed.

13 BY MR. MASTRO:

14 Q. Am I correct Mr. Fajardo has come to New York four or five
15 or six times over the course of litigation?

16 A. I don't know the exact number. A handful of times, yes.

17 Q. And that when he comes to New York, he stayed with you in
18 your apartment?

19 A. I think on at least one occasion he did. On other
20 occasions, if I remember, correctly he stayed in hotels.

21 Q. Am I correct Mr. Saenz was here in New York in September of
22 2011?

23 A. I remember one time he was here in New York. I don't
24 remember the date.

25 Q. It was coincided with the Second Circuit argument on the

D4GJCHE2

Donziger - direct

1 Count 9 appeal, didn't it, sir?

2 A. I don't remember.

3 Q. You don't remember him being here in 2011, correct?

4 A. I remember him being here at one point. I don't remember
5 the date or year. It was at least a year ago or maybe longer.

6 Q. Did he stay with you when he came here?

7 A. I don't believe so, but he might have. I don't remember.

8 Q. Mr. Yanza has also been to New York on several occasions at
9 the request of --

10 A. Correct.

11 Q. Has he stayed with you in your apartment?

12 A. I don't recall. Maybe on occasion.

13 Q. How about Mr. Prieto, has he been to New York?

14 A. I don't know.

15 Q. When was the last time Mr. Fajardo was in New York, to your
16 knowledge?

17 A. I don't recall.

18 Q. Am I correct that -- was it since this litigation was
19 filed?

20 A. When you say this litigation?

21 Q. February 2011, this RICO litigation?

22 A. I don't believe so.

23 Q. Am I correct after this RICO litigation was filed, you
24 spoke to Mr. Fajardo about sending a letter to this Court
25 demanding a jury trial and reserving defenses?

D4GJCHE2

Donziger - direct

1 A. I sent a letter?

2 Q. No. You spoke to Mr. Fajardo about sending this Court a
3 letter?

4 THE COURT: Sustained as to form. It is not clear as
5 to who the sender was to have been.

6 MR. MASTRO: I'll rephrase it.

7 BY MR. MASTRO:

8 Q. Mr. Donziger, am I correct in February 2011, after this
9 RICO action was filed, you spoke to Mr. Fajardo to urge him to
10 send this Court a letter demanding a jury trial, seeking an
11 extension and reserving defenses?

12 A. Sir, I don't recall. It is quite possible. I do not
13 recall.

14 Q. Are you aware that Mr. Fajardo sent this Court a letter in
15 late February 2011 in English, demanding a jury trial, seeking
16 an extension and reserving defenses?

17 A. I have a recollection that a letter was sent. I don't
18 remember specifics about it or even if my recollection is the
19 letter that you're describing.

20 Q. He doesn't speak English or write in English, correct, sir?

21 A. That's correct, but he is able to work with translators to
22 understand English --

23 Q. Someone helped him --

24 THE COURT: Let him finish the answer.

25 MR. MASTRO: Certainly, your Honor.

D4GJCHE2

Donziger - direct

1 BY MR. MASTRO:

2 Q. -- someone helped him craft that letter to know to use
3 terms like demanding a jury trial, answer and reserving
4 defenses?

5 A. I think that's true, and if that did happen in the way you
6 describe, I don't know if that was me or some other counsel on
7 our team.

8 Q. You have no recollection of that one way or the other or
9 you do recall speaking to him?

10 A. No, I don't.

11 Q. But someone on the U.S. legal team asked him to do that,
12 correct, sir?

13 A. I testified I don't recall what you're talking about. If
14 that did, indeed, happen as you describe it, yes, I assume
15 someone on the U.S. legal team asked him to do that.

16 Q. Am I also correct that when you needed in late 2010 powers
17 of attorney from Mr. Fajardo because the legitimacy of the
18 representation had been challenged by Chevron, that Mr. Fajardo
19 produced the powers of attorney and even a declaration, dated
20 January 19th, 2011, to submit to this Court, correct?

21 A. I don't recall. I do recall requesting a clarified power
22 of attorney at some point. Whether it was for that purpose,
23 another or both, I don't recall.

24 Q. And Mr. Fajardo delivered those powers of attorney to you,
25 correct?

D4GJCHE2

Donziger - direct

1 A. To the team, yes.

2 Q. And you were then able to submit them to this Court by
3 January 2011, correct?

4 A. I don't recall if there was an issue related to a dispute
5 over proper representation. I would assume he would have done
6 that, yes.

7 Q. Was he violating Ecuadorian secrecy law by turning over to
8 you powers of attorney between himself and the Ecuadorian
9 clients about his obligations and rights vis-a-vis them?

10 A. I would assume if he did that, in his estimation, no, he
11 was not violating Ecuador law by doing that.

12 Q. This isn't the first time -- strike that.

13 Sir, do you know as you sit here today what I mean by
14 the Cordova lawsuit?

15 A. I believe I do.

16 Q. Have you ever discussed with Mr. Fajardo the Cordova
17 lawsuit?

18 A. Not in any substance. He once mentioned it in passing to
19 me.

20 Q. When did he mention it in passing to you?

21 A. Sometime several weeks ago. I don't remember the date.

22 Q. That was before there was an order issued by the Ecuadorian
23 court concerning the production of documents in this case?

24 A. I believe so, yes.

25 Q. Tell me what Mr. Fajardo told you about the Cordova

D4GJCHE2

Donziger - direct

1 lawsuit.

2 MR. KEKER: Objection, your Honor; attorney-client
3 privilege and work product.

4 THE COURT: I don't see communication between lawyer
5 and client, and let me see counsel at sidebar.

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D4GJCHE2

Donziger - direct

1 (At sidebar)

2 THE COURT: Explain the work product argument.

3 MR. KEKER: Let me say first what I am concerned about
4 is waiver and a privilege waiver. Everything that he talks
5 about with Fajardo is joint defense, people representing the
6 same client that have the same interests in protecting those
7 clients. All of his conversations I consider attorney-client
8 privilege, you don't, but at least they're work product.

9 The answer to this is innocuous. If you make him
10 answer, I suppose he will, but I don't want it to be a
11 voluntary waiver of anything. I hope that's clear. There is
12 nothing here, but I am concerned about Chevron using it later
13 as they have, as claiming waiver as they're doing in that
14 motion we were talking about this morning.

15 THE COURT: Mr. Mastro.

16 MR. MASTRO: Your Honor, I don't see how it can be
17 attorney-client communication. I don't see how it is work
18 product. He is not involved in the lawsuit at all and it is
19 not going to be a broader waiver. Mr. Donziger is being told
20 by Mr. Fajardo what Mr. Fajardo is doing separately.

21 THE COURT: I don't know what he was told, you know?

22 MR. KEKER: Could I respond to that? That is too
23 absurd for words.

24 MR. MASTRO: Thank you for your kindness.

25 THE COURT: Just cut it out, both of you.

D4GJCHE2

Donziger - direct

1 I don't know what he is going to say and I don't know
2 what happened, and conceivably he communicated work product and
3 conceivably he communicated what from the standpoint of any
4 privilege protection would be exactly the same as what the
5 soccer scores were in Quito that night; in other words,
6 something that was no reflection of any strategy, opinion, work
7 product, anything like that, and insofar as it might be
8 ordinary work product, I am quite satisfied good cause has been
9 shown and there is no other source for it and you, after all,
10 Mr. Keker, put good faith in issue here.

11 MR. KEKER: You actually put good faith in issue. We
12 think there is no question about good faith.

13 THE COURT: Mr. Keker, you will stop those references
14 to me.

15 MR. KEKER: Yes, sir.

16 THE COURT: You will just stop it. Do you understand?

17 MR. KEKER: I understand. I do understand.

18 THE COURT: All right. Let's go.

19 (Continued on next page)
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D4GJCHE2

Donziger - direct

(In open court)

THE COURT: The objection is overruled. Please read the question back to the witness.

(Record read)

THE COURT: Please answer, Mr. Donziger.

A. Just its existence, nothing of substance.

BY MR. MASTRO:

Q. Did he tell you what the status of the litigation was?

A. No.

Q. Did he tell you who the parties were to the litigation?

A. No.

Q. Did he tell you that the first judge on the case had rejected the application?

A. No.

Q. Did he tell you who the plaintiff was in the litigation?

A. No. He told me nothing about the litigation, only about its existence.

Q. Is it your testimony that you only learned that such a suit had been filed after it had been filed?

MR. KEKER: Objection; argumentative. I object to the form.

THE COURT: Rephrase it.

BY MR. MASTRO:

Q. Mr. Donziger, did you only learn -- strike that.

Before the Cordova lawsuit was filed, did you have any

D4GJCHE2

Donziger - direct

1 discussions with Mr. Fajardo about filing such an action to
2 determine what Ecuadorian law would be on the question of
3 producing documents from the Ecuadorian counsel to Chevron?

4 A. Other than what I just testified to, no.

5 Q. Was that conversation before Cordova was filed with
6 Mr. Fajardo?

7 A. I don't know.

8 Q. So you may have discussed with him before that action was
9 filed that an action should be filed to determine whether
10 Ecuadorian law -- strike that.

11 The conversation with Mr. Fajardo about the filing of
12 a lawsuit in Ecuador concerning producing Ecuadorian documents
13 to Chevron may have occurred before the lawsuit was even
14 brought?

15 A. I don't recall the date, sir, as I testified.

16 THE COURT: He did not ask you the date, Mr. Donziger.

17 To the best of your recollection, was the conversation
18 before the lawsuit was filed or afterward?

19 THE WITNESS: I don't know. I don't even know when it
20 was filed. I don't have a date on when it was filed. I don't
21 know when it was filed.

22 BY MR. MASTRO:

23 Q. When, approximately, do you believe you had this
24 conversation with Mr. Fajardo?

25 A. A few weeks ago.

D4GJCHE2

Donziger - direct

1 Q. When you had that conversation with Mr. Fajardo, did you
2 convey the substance of the conversation to your lawyer in this
3 case?

4 MR. KEKER: Excuse me. That is attorney-client
5 privilege, and I object on that ground.

6 THE COURT: I'll give you a voir dire if you would
7 like to try to establish that it is covered by the
8 attorney-client privilege, Mr. Keker. It is your burden.

9 MR. KEKER: Sure.

10 THE COURT: Without leading, please.

11 VOIR DIRE EXAMINATION

12 BY MR. KEKER:

13 Q. Mr. Donziger, am I and others in my firm your lawyer in
14 this case?

15 A. Yes.

16 Q. Do we sometimes have conversations about the substance of
17 the case?

18 A. Yes.

19 Q. Would any conversation we have about what is going on in
20 Ecuador be, as far as you're concerned, attorney-client
21 communications?

22 A. Yes.

23 THE COURT: Anything else, Mr. Keker?

24 MR. KEKER: No, your Honor.

25 THE COURT: Overruled. Answer the question.

D4GJCHE2

Donziger - direct

1 THE WITNESS: I don't recall.

2 DIRECT EXAMINATION (Continued)

3 BY MR. MASTRO:

4 Q. Do you know when your lawyers in this case became aware of
5 the filing of the Cordova lawsuit?

6 A. No.

7 Q. Did you ever discuss with your lawyers the filing of the
8 Cordova lawsuit?

9 A. No.

10 MR. KEKER: The same objection.

11 THE COURT: I will sustain that. The answer is
12 stricken.

13 BY MR. MASTRO:

14 Q. When Mr. Fajardo told you about the Cordova lawsuit, did
15 you consider intervening yourself in that lawsuit so the
16 Ecuadorian court would know of your unique interest in
17 producing the Ecuadorian documents?

18 MR. KEKER: Asked and answered. He has been over
19 this.

20 THE COURT: I think so. Sustained.

21 BY MR. MASTRO:

22 Q. Mr. Donziger, when Mr. Fajardo told you about the Cordova
23 lawsuit, were you concerned that that lawsuit be considered
24 collusive?

25 A. I don't understand your question. Collusive as to what?

D4GJCHE2

Donziger - direct

1 Q. Was there anyone in that lawsuit as far as you were aware,
2 that Cordova lawsuit, who was advocating zealously for
3 production of the Ecuadorian documents?

4 A. Sir, I really don't know much about that lawsuit at all
5 other than what Mr. Fajardo said and what I've since read. The
6 answer is I have no idea who was advocating for who, what the
7 proceedings were, who showed up in court. I know none of that.

8 Q. Are you aware it was argued by the petitioner in that case
9 that production of the Ecuadorian documents to Chevron "would
10 cause us irreparable harm with disastrous consequences?

11 MR. KEKER: Objection; no foundation.

12 THE COURT: Overruled.

13 A. No.

14 BY MR. MASTRO:

15 Q. Does that concern you that that argument was made in the
16 Cordova lawsuit?

17 MR. KEKER: Objection; no foundation and irrelevant.

18 THE COURT: Well, there is plenty of foundation, but
19 I'll sustain the objection anyway.

20 BY MR. MASTRO:

21 Q. Sir, were you aware that the petitioner in the Cordova case
22 argued that, "the information that the oil company is demanding
23 seriously threatens the rights of the inhabitants of the
24 Ecuadorian Amazon."

25 Are you aware that was the argument that was made?

D4GJCHE2

Donziger - direct

1 A. No.

2 Q. Sir, you say that you've not personally reviewed the
3 Ecuadorian lawyer's files in the Selva Viva office, correct?

4 A. Sir, you have to be more specific when you say, "files."
5 What are you talking about?

6 Q. The documents that Chevron seeks produced from the
7 Ecuadorian lawyer's files in the Selva Viva files, it is your
8 testimony that you haven't actually reviewed those documents
9 yourself, correct, sir?

10 A. I have not accessed the computer files of Mr. Fajardo with
11 the other lawyers to review their documents, no, I have not.

12 THE COURT: What about paper?

13 THE WITNESS: The answer is there's very little paper.
14 These are the way lawyers down there work is with computers and
15 electronic files. Even stuff in court now is filed
16 electronically down there.

17 THE COURT: What about the paper?

18 THE WITNESS: I did not review paper. I asked, as I
19 mentioned, Mr. Fajardo. We made a formal request through a
20 letter for all production which includes paper, and he
21 concluded, based on his analysis, he couldn't do it because it
22 would violate Ecuador law.

23 THE COURT: Thank you. Go ahead.

24 BY MR. MASTRO:

25 Q. So as you sit here today, you can't say one way or the

D4GJCHE2

Donziger - direct

1 other whether the production of those Ecuadorian files to
2 Chevron, "would cause us irremediable harm with disastrous
3 consequences," correct, sir?

4 A. What I can say is --

5 Q. That is a yes or no, sir.

6 A. I can't answer that question yes or no, so I am not going
7 to.

8 Q. Then I withdraw the question. I will ask a simple yes or
9 no question.

10 As you sit here today, can you say one way or the
11 other whether the information that the oil companies demanded
12 seriously threaten the rights of the inhabitants of the
13 Ecuadorian Amazon, yes or no?

14 A. I believe it does by violating their confidentiality with
15 their attorneys based on a legal analysis done in Ecuador by
16 our local counsel.

17 Q. Now, sir, this isn't the first time that the legal team
18 representing the Aguinda plaintiffs has considered the gamut of
19 going into court in Ecuador to get an order to preclude U.S.
20 discovery, is it, sir?

21 A. I wouldn't characterize it as a gamut, sir.

22 THE COURT: Rephrase the question.

23 BY MR. MASTRO:

24 Q. This is not the first time that you all on the Aguinda
25 legal team have considered going into court in Ecuador to get

D4GJCHE2

Donziger - direct

1 orders to preclude production of Ecuadorian documents in U.S.
2 proceedings, is that correct, sir?

3 MR. KEKER: As framed, it calls for work product, your
4 Honor.

5 THE COURT: Give me a moment.

6 (Pause)

7 THE COURT: Put a time-frame on it.

8 BY MR. MASTRO:

9 Q. Since 2010, January 2010, this isn't the first time that
10 the legal team representing the Aguinda plaintiffs has
11 considered going into court in Ecuador to try to get an order
12 to preclude production of documents in the United States?

13 MR. KEKER: The same objection, plus the time-frame is
14 too broad for this hearing.

15 THE COURT: The latter is certainly right. I take it,
16 Mr. Mastro, you are referring to material that has already been
17 produced --

18 MR. MASTRO: Correct, your Honor.

19 THE COURT: -- in relation to the possibility of an
20 attempt some years ago to shut down the Stratus and possibly
21 other 1782 proceedings by an application to the Ecuadorian
22 court. Am I right?

23 MR. MASTRO: That's correct, your Honor.

24 THE COURT: Let's frame it appropriately.

25 BY MR. MASTRO:

D4GJCHE2

Donziger - direct

1 Q. Am I correct, Mr. Donziger, that in March 2010 Julio Prieto
2 wrote to you and Mr. Fajardo and Mr. Saenz and proposed that --
3 in fact, said the Ecuadorian lawyers had decided, "to file a
4 writ of protection before a judge in Ecuador asking the judge
5 to write to the judge in Denver not to reveal the
6 correspondence with Stratus because this would affect our
7 fundamental rights"?

8 A. Do I remember that, is that your question?

9 Q. Yes, sir.

10 A. I have a recollection that happened, yes.

11 Q. That was in the same e-mail Mr. Prieto said if the Stratus
12 documents came out, we might all go to jail, correct, sir?

13 A. I don't recall.

14 Q. He went on to tell you at that time "this is an idea that
15 may not work, but with perhaps with adequate support we can do
16 it."Do you remember that, sir, in that e-mail?

17 MR. MASTRO: We'll mark this as Exhibit 7 in the
18 hearing, your Honor.

19 (Pause)

20 BY MR. MASTRO:

21 Q. Sir, this is a March 30, 2010 e-mail from Mr. Prieto to you
22 and Mr. Yanza and Mr. Fajardo. Do you see that, sir?

23 A. Yes. .

24 Q. Do you see where he writes to you about the Stratus
25 production ordered in Denver, that "the effects are potentially

D4GJCHE2

Donziger - direct

1 devastating in Ecuador. Apart from destroying the proceeding,
2 all of us, your attorneys, might go to jail."

3 Do you see that, sir?

4 A. I see where he wrote that, yes.

5 Q. Isn't it the case he then proposed to you and the others --
6 in fact, said it had already been decided "to avoid this, we
7 have decided to file a writ of protection before a judge in
8 Ecuador, asking the judge to write to the judge in Denver not
9 to reveal the correspondence because this would affect our
10 fundamental rights," do you see that, sir?

11 A. Sir, I stipulate he wrote this e-mail. I don't know what
12 you're getting at.

13 Q. Thank you. He acknowledged to you it is an idea that may
14 not work, but with adequate support, perhaps --

15 THE COURT: Mr. Mastro, it says what it says.

16 MR. MASTRO: I understand.

17 THE COURT: If you have another question, let's get to
18 it.

19 BY MR. MASTRO:

20 Q. Am I also correct there was a 1782 proceeding in the
21 District of Columbia involving Alberto Wray?

22 A. I remember such a proceeding.

23 Q. You were involved in that proceeding, correct?

24 You were following that proceeding, correct?

25 A. Not very much, no.

D4GJCHE2

Donziger - direct

1 Q. Wray was the head lawyer for the Ecuadorian plaintiffs
2 before you fired him and had Mr. Fajardo take over, correct?

3 A. Sir, I did not fire Mr. Wray. Yes, at one point he was the
4 chief lawyer in Ecuador before Mr. Fajardo became the lawyer.

5 Q. Did you ask Mr. Wray at any point to produce his documents
6 from Ecuador in response to Chevron's first request for
7 document production?

8 A. You're confusing me. In response to Chevron's request for
9 document production in this case?

10 Q. Yes, did you ask Mr. Wray to produce his documents from
11 Ecuador?

12 A. No. Mr. Wray is represented by counsel.

13 Q. Sir, am I correct that in the 1782 proceeding against
14 Mr. Wray in the District of Columbia, he made this very same
15 argument that Ecuadorian secrecy laws prevented him from being
16 able to produce the Ecuadorian documents?

17 A. I don't know what arguments Mr. Wray made. As I sit here
18 today, I don't know.

19 Q. Am I correct that Judge Patelli rejected that argument, and
20 Mr. Wray then produced his documents from Ecuador in response
21 to that 1728 proceeding, correct?

22 A. Sir, I have no knowledge of any of that.

23 Q. And Mr. Wray has not been charged, gone to prison, faced
24 any consequence from having produced those Ecuadorian
25 documents, has he, sir?

D4GJCHE2

Donziger - direct

1 A. Sir, I have no idea.

2 MR. MASTRO: No further questions.

3 THE COURT: All right. Thank you. Mr. Keker.

4 MR. KEKER: Could I get some guidance from the court
5 about when we'll take the lunch break? I am prepared to go
6 forward as long as you want. I am wondering about timing?

7 THE COURT: 30 to 45 minutes.

8 MR. KEKER: Great, thank you.

9 CROSS-EXAMINATION

10 BY MR. KEKER:

11 Q. Mr. Donziger, you heard Judge Kaplan say that Chevron's
12 theory is that you control Fajardo and other people in Ecuador.
13 Did you hear that?

14 THE COURT: That would be an inaccurate summary of
15 what I said, counselor.

16 MR. MASTRO: Objection, your Honor.

17 BY MR. KEKER:

18 Q. Do you control Pablo Fajardo and what he does with respect
19 to this case?

20 A. No.

21 Q. Have you ever controlled Pablo Fajardo and the legal team
22 down there?

23 A. No.

24 Q. When did you meet Pablo Fajardo?

25 A. I met Mr. Fajardo several years ago, probably in the early

D4GJCHE2

Donziger - cross

1 stages of the Ecuador phase of the case in 2003 or 2004.

2 Q. Can you tell Judge Kaplan what the relationship, what his
3 role was when he started and what his relationship with
4 Mr. Yanza, with Selva Viva, the Amazon Defense Fund is?

5 A. Mr. Fajardo was working as a member of our legal team under
6 Dr. Wray, who is a former Supreme Court Justice in Ecuador.
7 Our initial (Spanish) a very formal term under Ecuador law
8 meaning the lawyer who actually appears in court and represents
9 the clients and has the authority.

10 Over time when the case began and judicial inspections
11 began in the field, in the Amazon rain forest, it was apparent
12 Dr. Wray wanted to phase into a different kind of role, not
13 that role because of the, I think the amount of work required
14 was more than anyone had anticipated, so at that point, I think
15 around 2004 or 5, Mr. Fajardo took over the role of (Spanish).
16 At that point he became the lead lawyer in Ecuador.

17 Q. Who is Mr. Yanza and what is Mr. Fajardo's relationship
18 with Mr. Yanza?

19 A. Mr. Yanza is a non-lawyer who, through the course of the
20 litigation, beginning in the early 1990's, served as the lead
21 organizer for the indigenous and farming communities in Ecuador
22 affected by Texaco's obligation.

23 Q. What is Selva Viva?

24 A. Selva Viva is an administrative entity created in Ecuador
25 used as a conduit for funds that were paid to support the case

D4GJCHE2

Donziger - cross

1 in Ecuador.

2 Q. What is the Amazon Defense Fund and their relationship to
3 the other people you were talking about?

4 A. The Amazon Defense Fund is otherwise known as the Frente in
5 Ecuador, is the non-profit, non-governmental organization based
6 in this region of Ecuador that exists to assert the rights of
7 the people with regard to environmental protection and
8 correcting environmental injustice, but it is not a legal
9 organization; it is a community-based advocacy organization.

10 Q. Has your relationship with these people changed over the
11 years and in particular since the 1782 was filed?

12 MR. MASTRO: Objection, your Honor. He is leading
13 him. It is his witness. He should ask him open-ended
14 questions.

15 THE COURT: Overruled.

16 A. Yes, the relationship has evolved. I would say it has
17 changed significantly since the 1782 process was ordered by
18 this Court to turn over my entire case file.

19 Then subsequent to that, when the RICO case was filed,
20 that was I believe the Fall of 2010, a few months later when
21 this action, this RICO action was filed, I would say the
22 relationship changed still further, such that the clients,
23 while we continued to work together on broad strategic issues,
24 have to some significant degree tried to distance themselves
25 from me in terms of our degree of collaboration.

D4GJCHE2

Donziger - cross

1 Q. Did you learn anything about the reaction of the people in
2 Ecuador, starting with Pablo Fajardo, to the fact that this
3 Court issued a preliminary injunction against you soon after
4 this RICO case was filed?

5 A. Yes.

6 Q. Can you tell us what you learned about their reaction?

7 THE COURT: I am sorry. Tell us what who learned
8 about whose reaction?

9 MR. KEKER: What Mr. Donziger learned about his
10 clients and his associated lawyer's reaction to the preliminary
11 injunction decision in this case.

12 THE COURT: Okay. So I understand the rules of
13 evidence are not strictly applied here, but basically we're
14 into multiple hearsay, right?

15 MR. MASTRO: Yes.

16 MR. KEKER: I don't think so because we are not trying
17 to prove the truth of the matter. What we are trying to do is
18 establish Mr. Donziger's understanding of his lack of control
19 over people in Ecuador, exactly contrary to what Mr. Mastro was
20 trying to prove.

21 THE COURT: Okay. You may answer the question.

22 A. So the decisions made in this Court both in the 1782 action
23 against me as well as in the RICO action, including the
24 preliminary injunction, led to a situation where the clients
25 concluded that they could not get a fair hearing in this Court,

D4GJCHE2

Donziger - cross

1 and they concluded that comments, no disrespect, your Honor,
2 but comments made by this Court in the context of various
3 actions related to the Ecuador case were inappropriate, unfair
4 and very prejudicial to them. I think they lost complete faith
5 in this process.

6 BY MR. KEKER:

7 Q. Did you have any understanding as the RICO case began,
8 after you made your broad discovery in the 1782 actions, after
9 you had been deposed for 16 days, did you have any
10 understanding about whether or not Mr. Fajardo and the rest of
11 his and your clients were interested in participating in these
12 proceedings before they had been sued by Chevron?

13 A. They concluded, based on what I just said, that this Court
14 would not have jurisdiction over them, could not exercise
15 jurisdiction over them and that they, as a result of that and
16 some other reasons, they would not appear. That is what they
17 told me.

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D4gdche3

Donziger - cross

1 BY MR. KEKER:

2 Q. Now, did the issue of surveillance of you by Chevron come
3 up over the last couple of years?

4 A. Yes.

5 Q. And what do you know about surveillance of you by Chevron
6 over the last couple of years?

7 MR. MASTRO: Objection, your Honor.

8 THE COURT: Sustained.

9 Q. Well, do you know whether or not surveillance of you by
10 Chevron has affected your relationship with your clients and
11 Mr. Fajardo and others?

12 MR. MASTRO: Objection.

13 A. Yes.

14 THE COURT: The objection is sustained. The answer is
15 stricken.

16 Proceed.

17 MR. KEKER: Could I be heard at sidebar, your Honor?

18 THE COURT: I don't think so, sir. I have already
19 read what you submitted on this.

20 Q. Based on -- well, let's go to this.

21 Based on what you know about what's going on in
22 Ecuador, is it conceivable that Chevron did not know about this
23 case that was pending that is the subject of this hearing?

24 MR. MASTRO: Objection.

25 THE COURT: Sustained.

D4gdche3

Donziger - cross

1 MR. KEKER: Could I make an offer of proof on that,
2 your Honor?

3 THE COURT: You can do that at the sidebar.

4 MR. KEKER: OK. Should we do it now?

5 THE COURT: Yes.

6 (At the sidebar)

7 MR. KEKER: The offer proof is that Mr. Donziger would
8 testify, if he were permitted, that he is personally aware of
9 surveillance of him in Ecuador. He is now aware of additional
10 surveillance because Ecuador has just gotten all of his customs
11 records, apparently, which we understand is in violation of
12 Ecuadorian law and probably can't be done without bribery,
13 which would be a Foreign Corrupt Practices Act violation; that
14 he is personally aware of surveillance that's being done by
15 them of him here; that given the level of surveillance, the
16 work of Kroll, Sam Anson, and other investigative companies in
17 Ecuador, it is simply inconceivable, since they followed
18 Fajardo around, they followed Donziger around, that they didn't
19 know about Fajardo, this case, this Cordova case, and that it's
20 probably --

21 THE COURT: Keep your voice down.

22 MR. KEKER: -- highly likely that they already have
23 Fajardo's files and are trying through this proceeding to find
24 a way to legitimize them since they got them illegally by
25 hacking.

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Donziger - cross

1 MR. MASTRO: I know Mr. Keker is from California.
2 There is something different in the air there. That is
3 fantasy. These are official public records. This is migration
4 forms that we obtained by making a request to the government.
5 But everything turned out to be illegal when you get
6 information out of Ecuador. It is not illegal.

7 Number two. We are not going to speak to the
8 surveillance. I am not going to waive privilege, like he just
9 did with the line of questions that he did with Mr. Donziger
10 about what conclusions and thoughts they had about these
11 proceedings, we'll come back to that later. But thank you,
12 Mr. Keker. The fact of the matter is that there is no
13 substance to what he is saying. There is no substance to it.
14 We didn't know about it.

15 If we had known about it, we would have been in here
16 in a red hot second. We would have wanted to appear. We would
17 have wanted to be represented there.

18 That is a crazy, crazy notion. So if we are going to
19 be in fantasyland, that is one thing. But the reality is
20 surveillance is irrelevant to this. We didn't know about these
21 proceedings beforehand, the migration records. So damning to
22 his case, because he has had trips to Ecuador every month, even
23 more often than he did before the lawsuit was brought, as
24 opposed to his testimony. It is just, your Honor, I don't even
25 know where to begin to say how ludicrous this is.

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Donziger - cross

1 THE COURT: The keyword was irrelevant.

2 Sustained.

3 MR. MASTRO: Thank you, your Honor.

4 THE COURT: And I am going to rule on the protective
5 order motion now.

6 (In open court)

7 THE COURT: Because it is implicated by the ruling I
8 made and the ruling that I adhere to at the sidebar, I will
9 rule on a pending motion before me that has been fully briefed
10 both by the plaintiff and the defendants, and that is Chevron's
11 motion, which they style one for a protective order, which is
12 actually a motion in limine, to preclude the defendants from
13 calling Mr. Mastro, Anne Champion, who are the Chevron
14 officers, employees, contractors, or agents most knowledgeable
15 about electronic, visual or other surveillance for purposes of
16 this hearing.

17 Chevron, as I indicate, moves to preclude any such
18 evidence. The witnesses, according to the defendants,
19 supposedly go to the question of whether the defendants'
20 failure to notify either Chevron or this Court of their
21 commencing what has been referred to as the Cordova litigation
22 in Ecuador, the object of which was to obtain a court ruling in
23 Ecuador prohibiting Fajardo, and others, from complying with
24 discovery in this case, quote, had some effect on the instant
25 litigation, close quote. The quote is from the defense brief.

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Donziger - cross

1 The defendants speculate that Chevron has engaged in
2 surveillance of the Ecuadorian counsel and, of course, as we've
3 just heard, Mr. Donziger. They speculate that it is so
4 pervasive that it is inconceivable that Chevron was unaware of
5 the Cordova litigation. They speculate even further in their
6 papers that Chevron may have had access to Mr. Fajardo's
7 computer through electronic surveillance and, thus, presumably
8 were not surprised when suddenly a decision in the Cordova
9 litigation in Ecuador was disclosed by them.

10 The first proposition is that that entire argument
11 comes entirely too late. Chevron moved for sanctions based on
12 the alleged failures of the defendants to comply with their
13 discovery obligations and my Order. On the 12th of March, the
14 motion rested in part on the defendants' behavior in respect of
15 the Cordova litigation, including, but not limited to, the
16 contention by Chevron that the Cordova litigation was brought
17 without disclosing the fact that it had been brought either to
18 the Court or to Chevron.

19 The defendants responded on March 26th. Nowhere in
20 their papers did they suggest that Chevron knew of the Cordova
21 litigation any earlier than Chevron said, whether by
22 surveillance of Fajardo or anybody else or Fajardo's computer.
23 The briefing was fully closed on April 2nd. These contentions
24 now are too late.

25 Furthermore, the speculations -- and I refer to them

D4gdche3

Donziger - cross

1 advisedly -- are unsupported by a single affidavit,
2 declaration, or other evidence at least in the papers submitted
3 by defendants recently or at this hearing.

4 Secondly, putting aside the question that the entire
5 argument is untimely, this hearing was scheduled to consider
6 only specific questions relating to Chevron's motion for
7 sanctions, including the defendants' good faith and their
8 practical ability to produce the Ecuadorian documents. The
9 subjects as to which the defendants allegedly wish to question
10 those Chevron witnesses that are the subject of the motion and
11 Mr. Donziger at the moment are not at all relevant to this
12 hearing.

13 Furthermore, the suggestion, which is made in their
14 papers, that my order requiring that any of the counsel in this
15 case who were sought by the adversaries as witnesses had to
16 show up constituted a predetermination, that anything that
17 either side might wish to examine opposing counsel about
18 necessarily was relevant, or would be relevant, is simply not
19 worthy of slightest degree of credence.

20 But all of that is relatively minor compared to the
21 most important point.

22 The most important point is that the question before
23 this Court is whether these defendants should be sanctioned for
24 their alleged defiance of their discovery obligations under the
25 laws of the United States and this Court's order that they

D4gdche3

Donziger - cross

1 produce responsive documents, whether they are in Ecuador or
2 anywhere else. Among the issues pertinent to that
3 determination are whether these defendants have practical
4 control over those documents and whether these defendants have
5 acted in good faith.

6 What Chevron knew and when it knew it about the
7 Cordova litigation simply has no bearing on whether the
8 defendants have control of the documents or acted in good
9 faith. It is a red herring.

10 Furthermore, the defendants' suggestion that on the
11 assumption, for the purposes of discussion, that the defendants
12 in fact do control the documents in Ecuador and that they in
13 fact have acted in bad faith in disclosing relevant evidence in
14 this litigation would somehow matter simply because Chevron,
15 hypothetically, was aware of one little bit of what was going
16 on down there in Ecuador -- and I refer to the Cordova
17 litigation -- earlier is simply without merit. It's just
18 entirely without merit. So that subject is entirely off
19 limits.

20 Mr. Keker, you may continue your examination.

21 MR. KEKER: Thank you, your Honor.

22 BY MR. KEKER:

23 Q. Did you initiate the Cordova litigation, Mr. Donziger?

24 A. No.

25 Q. Did you have anything to do with initiating it?

D4gdche3

Donziger - cross

1 A. No.

2 Q. We were talking about changes in your relationship with
3 Fajardo and others down there. Was there any other factor
4 after the filing of the RICO case, the issuing of a preliminary
5 injunction, your order to turn over all your documents in the
6 1782 case, was there any other factor that has changed your
7 relationship with them?

8 A. Yes.

9 Q. What is it? Would you explain to the Court, please?

10 A. Yes, I will. My role in Ecuador has always been from the
11 beginning vis-a-vis the local legal team one of an advisor, not
12 a person in control or in command of decisions. There have
13 been times through the years when I had a lot of influence. I
14 think the lawyers in Ecuador when I give advice assess it and
15 decide whether they believe it is within the interest of the
16 clients to take it.

17 I have never had the authority to order an Ecuador
18 lawyer to do something, to file something in court, to give me
19 stuff that he or she would not decide to do on his or her own.

20 Over time, with the decisions by this Court for me to
21 turn over my entire case file, as well as the filing of the
22 RICO case, my advice to the clients I believe has had a
23 significantly diminished degree of influence as a result of the
24 position that I'm put in, and I believe deliberately put in, by
25 my adversaries at Chevron.

D4gdche3

Donziger - cross

1 So at this point to me it is preposterous to think
2 that I can order Pablo Fajardo to turn over his case file to
3 me. He has made his own decision based on his own analysis,
4 and I do not have any ability to do that other than to continue
5 asking him and hear the same reasons why he can't.

6 MR. MASTRO: Your Honor, I move to strike. That's not
7 a factor; that was a speech. He didn't say anything that had
8 actually happened that was a factor. He just gave a
9 self-serving speech, so I move to strike it.

10 THE COURT: I will take it for what it is worth,
11 Mr. Mastro.

12 MR. MASTRO: OK. Thank you, your Honor.

13 THE COURT: I understand that is his position.

14 BY MR. KEKER:

15 Q. Well, Mr. Donziger, has Mr. Fajardo made his position
16 plain, in your mind at least, about whether or not he is
17 interested and willing to participate in discovery in this
18 case --

19 A. Yes, he has.

20 Q. -- with these documents?

21 A. Yes, he has.

22 Q. Do you remember -- let me show you what is attached as
23 Exhibit -- I'm sorry, I don't have copies of this, your
24 Honor -- this is Exhibit 3522 to Chevron's motion for
25 sanctions.

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Donziger - cross

1 MR. KEKER: Can I give this to the witness?

2 THE COURT: Well, as soon as you tell me what exhibit
3 it really is, because I have Chevron's motion and I don't have
4 anything attached to it that's numbered 3522, I don't think,
5 unless there is something I am not aware of.

6 (Pause)

7 I see. The tabs don't -- I think I may have it. Let
8 me see.

9 MR. KEKER: I was told that these tabs are all sort
10 of --

11 THE COURT: They are constructively -- there is a 35
12 in front of them imaginarily; is that right?

13 MR. KEKER: I don't know. Mine is marked 3522. This
14 is what my office gave me. It is the letter -- it is a
15 March 2, '11 letter from Mr. Fajardo to you.

16 THE COURT: Mr. Mastro, maybe you know where in your
17 exhibit binder this is.

18 MR. KEKER: May I show you mine, your Honor? I will
19 give you mine.

20 MR. MASTRO: I am having it pulled now, your Honor.

21 THE COURT: Oh, I see.

22 All right. I have found it now. Thank you.

23 MR. KEKER: May I approach the witness and give him a
24 copy of it?

25 THE COURT: Yes.

D4gdche3

Donziger - cross

1 MR. KEKER: Thank you. And now I don't have a copy
2 but I will ask a question about it.

3 MR. MASTRO: Can I get a copy of it?

4 MR. KEKER: If I can't get a copy, I doubt you can get
5 a copy. You have to look at your motion, sir. I don't have a
6 copy. I am here alone.

7 THE COURT: Put it on the document camera.

8 MR. KEKER: Your Honor, Mr. Mastro is here to argue a
9 motion that he filed, and this is an exhibit to his motion. He
10 must be able to put it in front of him.

11 THE COURT: Look, Mr. Keker, we could do without that.

12 MR. KEKER: Sorry.

13 (Pause)

14 THE COURT: All right. Everybody have it?

15 MR. KEKER: Everybody but me, your Honor.

16 THE COURT: Everybody but you?

17 MR. KEKER: No. I've got it. Mine, I know what is in
18 it.

19 BY MR. KEKER:

20 Q. Is this a letter dated March 11, 2011 that Mr. Fajardo
21 wrote at the beginning of the -- relatively close to the
22 beginning of the RICO case to Judge Kaplan?

23 A. Yes. It is dated March 2, 2011, yes.

24 Q. And did you see that letter sometime around there?

25 A. I believe I did, yes.

D4gdche3

Donziger - cross

1 Q. And were you aware of whether or not Mr. Fajardo was
2 going -- accepted the jurisdiction of the Court or was going to
3 participate in the RICO case?

4 A. Yes.

5 Q. Did that letter tell you what the answer to that was?

6 A. Yes.

7 Q. And what was Mr. Fajardo's position, according to that
8 letter, about participation in the RICO case?

9 A. The answer was no, and he said he vigorously opposes the
10 exercise of this Court's jurisdiction over him and his
11 colleagues.

12 Q. Now, are you aware as time went on that Mr. Fajardo made
13 statements in the press and otherwise, statements that in many
14 cases Chevron would bring to the attention of Judge Kaplan,
15 about what he thought of the proceedings in the RICO case?

16 A. Yes.

17 Q. And would you look at in that same volume, 3525 -- and we
18 don't have to go into the details of it.

19 MR. KEKER: Can I go up there with him, your Honor,
20 and show him 3525?

21 THE COURT: No. You can direct his attention.

22 Q. 3525. And I think on the second page, it is a transcript
23 that Chevron has provided about Mr. Fajardo's statements. Can
24 you tell us when the statements were made from looking at that
25 exhibit?

D4gdche3

Donziger - cross

1 A. Yes.

2 Q. When?

3 A. October 23rd, 2012, I believe.

4 Q. And in it, in the second page, are there -- is there a
5 transcription, a translation of what Mr. Fajardo had to say
6 about this Court -- you don't have to read it, just tell me
7 whether or not there is a description of what he is saying
8 about this Court and what he thinks of these proceedings.

9 A. There is such a description.

10 Q. OK. You don't need to read it. It is there in the record
11 of the case.

12 From these and other communications that Mr. Fajardo
13 had in the press and publicly, did you gain an understanding of
14 whether or not he had any interest in turning over his files to
15 Chevron as a result of discovery in this case?

16 MR. MASTRO: Objection to form, your Honor. He keeps
17 saying his files. They are co-counsel for plaintiffs.

18 THE COURT: Look, I understand entirely. Mr. Kecker
19 wants to make a record here that Mr. Fajardo is, at least for
20 the public record, hostile to the exercise of jurisdiction by
21 this Court regardless of what the laws of the United States
22 are, regardless of the fact that he is a defendant in this
23 case, regardless of the fact that there is a default
24 outstanding against him, and I'm going to let him do it. I
25 mean, there it is.

D4gdche3

Donziger - cross

1 MR. MASTRO: I understand, your Honor. It is just
2 they are not his files. They are not Fajardo's files. That's
3 all.

4 THE COURT: I understand.

5 Go ahead.

6 BY MR. KEKER:

7 Q. Let me explore that just a second.

8 Fajardo is your co-counsel with respect to the
9 litigation; you represent the same people, is that right?

10 A. We represent the same people but I work for him; he does
11 not work for me.

12 Q. OK. Can you tell him what to do with respect to this
13 litigation?

14 A. I can make suggestions, and I'd like to think my
15 suggestions have mattered to him and have influence over him,
16 but I cannot order him to do anything with respect to this
17 litigation.

18 Q. At the time that Judge Kaplan issued his order, his
19 April -- or, excuse me, February 14 order, I guess, did you ask
20 your attorneys to write to Mr. Fajardo and say please give us
21 the files that are called for by Chevron?

22 A. Yes.

23 Q. Yes. And was his response a surprise to you?

24 A. No.

25 MR. KEKER: Your Honor, I am referring to the

D4gdche3

Donziger - cross

1 February 14 letter, which was written by me. It is Exhibit A
2 to Mr. Donziger's response to the Court Order of February 13
3 regarding Ecuadorian documents, and that's Exhibit -- it is
4 docket number 787. It is my letter.

5 And it says, among other things, "I write on behalf of
6 Mr. Donziger and his firm to ask you to notify me immediately
7 whether or not you, or any other persons or entities associated
8 with the litigation in Aguinda v. Chevron will provide to us
9 the materials sought by Chevron on the schedule set forth by
10 Judge Kaplan in the enclosed Order."

11 BY MR. KEKER:

12 Q. Was that letter sent in bad faith?

13 A. Absolutely --

14 MR. MASTRO: Objection.

15 THE COURT: Overruled.

16 Q. Did you believe that you were carrying out your
17 responsibilities under Judge Kaplan's Order by telling your
18 attorneys to write to Fajardo and ask him to check with all his
19 clients about whether or not they were going to comply with the
20 Judge's order up here to turn over the documents in Ecuador in
21 this case?

22 A. Yes. That was the entire purpose of that letter.

23 Q. And then Mr. Fajardo wrote back in a letter dated
24 February 18 -- and that is Exhibit B to that same exhibit, your
25 Honor, 787 -- and in it he makes plain -- I mean, he says -- I

D4gdche3

Donziger - cross

1 don't know if he makes plain but he says, "We are not attorneys
2 for Steven Donziger. It's obvious that" -- well, you can read
3 it. "It is obvious that Judge Louis Kaplan, induced by Chevron
4 Corporation, is very much mistaken and falsely asserting that
5 we attorneys in Ecuador are attorneys and agents of Mr. Steven
6 Donziger."

7 This is completely untrue.

8 Did you put him up to saying that?

9 A. No.

10 Q. Did you tell him what to say?

11 A. No.

12 Q. Does Pablo Fajardo have a mind of his own?

13 A. Yes.

14 Q. Is that what -- as far as you know what he said, as opposed
15 to something that you made him say?

16 A. Yes.

17 THE COURT: Do you think you might be leading a
18 little, just a teensy bit?

19 MR. KEKER: A teensy bit, your Honor. I will admit
20 that. I'm sorry.

21 Q. The second -- and the letter speaks for itself, and you see
22 it goes on to say the Court of the Honorable Lewis Kaplan has
23 no jurisdiction over me or my work team in Ecuador." He goes,
24 "I have no obligation to comply."

25 Did you suggest any of this response of Mr. Fajardo to

D4gdche3

Donziger - cross

1 the letter that I sent?

2 A. No. And I did not write that letter and I never saw a
3 draft of that letter before you received it.

4 Q. OK. And then he goes on to say, "The constitutionally
5 expressly prohibits and describes an offense defined in the
6 case of providing the requested information," and he talks
7 about that.

8 What did you know about that at the time this letter
9 was sent?

10 A. I knew there was an issue of Ecuadoran law that he felt
11 prevented him from turning over these documents per my request,
12 and what he's describing there, as I understand it, is that
13 issue.

14 Q. Based on what you knew about --

15 THE COURT: Can I know the date of that, please,
16 Mr. Keker?

17 MR. KEKER: Yes, sir. It is February 18, and it's --

18 THE COURT: Of this year?

19 MR. KEKER: Yes. You ordered on February 10, I think,
20 that we get documents from Ecuador. I wrote on
21 February 14th --

22 THE COURT: I just want to know the date of the
23 letter.

24 MR. KEKER: I'm sorry.

25 THE COURT: Thank you.

D4gdche3

Donziger - cross

1 MR. KEKER: And it is all attached as Exhibit A and B
2 to Donziger's response to the Order, to your Order, which is --
3 they're telling me is actually docket number 829. OK. Sorry.
4 Docket number 829. And it's in the Court file.

5 BY MR. KEKER:

6 Q. Is there anything about that exchange that was manipulated
7 by you?

8 A. No.

9 Q. Is there anything about that exchange that was discussed
10 between you and Fajardo?

11 A. No.

12 Q. Was there anything about that exchange that seemed
13 different from the position that Fajardo had made plain ever
14 since the RICO case was filed?

15 A. No.

16 Q. Now, the judge had some questions for this hearing about
17 your practical ability to get documents out of Ecuador. You've
18 traveled to Ecuador, you've testified, right?

19 A. Yes.

20 Q. And you can meet with Fajardo and Yanza and others at their
21 offices?

22 A. Yes.

23 Q. Can you take documents out of there without their
24 permission?

25 A. No.

D4gdche3

Donziger - cross

1 MR. MASTRO: Objection.

2 BY MR. KEKER:

3 Q. Well, tell us, what is your access to documents that are in
4 those offices, particularly on their computers?

5 A. I cannot get access to their computers or documents in
6 their computers unless they give me permission, and they have
7 declined to give me permission, and, therefore, I could not get
8 those documents.

9 Q. Why wouldn't you, while you were in the offices and their
10 back is turned, why wouldn't you scoop up, for example, the
11 paper files?

12 A. That would be theft, and I refuse to engage in that kind of
13 behavior.

14 Q. Why wouldn't you go to some of the nonlawyers and get them
15 to access documents without telling them what you were going to
16 use them for, in other words, go behind Mr. Fajardo's back?

17 A. My responsibilities to the clients preclude me from doing
18 such a thing. It would be an ethical violation and that's
19 just -- I can't do that.

20 Q. Have you ordered Fajardo to do anything in Ecuador about
21 his documents?

22 A. I'm not sure I understand the question.

23 Q. With respect to this discovery demand by Chevron and Judge
24 Kaplan's order that, to the extent -- well, it is his order to
25 get documents out of Ecuador, can you order him to give you the

D4gdche3

Donziger - cross

documents that he doesn't want to give?

A. I don't have the practical ability to order him to give me documents. I've made that request through letter from counsel as well as orally, as I testified, and he has made his own determination based on what he has told me is his own analysis of his situation and Ecuadoran law issues and potential liability he has to his clients, and based on that he's decided he's not turning over those documents to me.

Q. Did you have anything to do with that decision, helping him make it?

A. No. Nothing at all.

Q. Were you aware that Chevron got somebody in Ecuador that they say is an expert to say that there is no problem with Fajardo giving confidential client files to this -- in discovery in this case?

A. Yes.

Q. And were you aware that there was a dueling affidavit filed by the Lago Agrio plaintiffs' counsel, Mr. Smyser, Mr. Veselka, that said the opposite?

A. Yes.

Q. Do you consider it bad faith for somebody to get an Ecuadorian Court to try to resolve these dueling expert affidavits?

MR. MASTRO: Objection.

THE COURT: It's nonjury. Overruled.

D4gdche3

Donziger - cross

1 A. I don't consider it bad faith at all. I consider it
2 appropriate.

3 Q. These exhibits that you were shown, for example, Exhibit 1,
4 the Fajardo -- I don't even need to show you again, but it
5 describes you as the U.S. representative.

6 Do you want to look at it again?

7 A. I don't need to look at it.

8 Q. What do you understand the U.S. representative was as
9 described in a document that you are not a part of the Fajardo
10 retainer agreement?

11 A. It was the person who was going to represent the Ecuadoran
12 representatives in the United States for various purposes,
13 including trying to find counsel to handle the litigations that
14 would be submitted to the representatives in Ecuador for
15 consideration.

16 I will say that at this point in time I do not believe
17 that the clients consider me to be their U.S. representative.
18 That's a change.

19 THE COURT: That's stricken, too.

20 MR. KEKER: OK.

21 Q. Do the clients currently believe you to be their U.S.
22 representative?

23 A. I don't believe --

24 MR. MASTRO: Objection.

25 THE COURT: Sustained.

D4gdche3

Donziger - cross

1 Q. Are you currently the clients' U.S. representative?

2 A. No.

3 THE COURT: Has either of those agreements been
4 modified or terminated by a written instrument, so far as you
5 are aware, Mr. Donziger?

6 THE WITNESS: I don't know if there is a written
7 instrument but I believe --

8 THE COURT: Just answer the question, sir. If
9 Mr. Kecker wants to ask you anything else, he may.

10 THE WITNESS: I don't know.

11 THE COURT: You don't know. OK.

12 BY MR. KEKER:

13 Q. Have the description of your duties been modified by
14 attorney-client communications from Ecuador, the descriptions
15 in the agreement?

16 A. Yes.

17 Q. And when did that happen most recently?

18 A. Maybe around January of this year.

19 Q. With respect to -- would you please look at I guess it was
20 Exhibit -- was it 1? Is that the Fajardo agreement?

21 Do you have it in front of you?

22 A. Yes.

23 Q. Look at paragraph 11. Does paragraph 11 make this
24 agreement subject to be governed, construed, and interpreted in
25 accordance with the laws of the Republic of Ecuador without

D4gdche3

Donziger - cross

1 reference to principles or conflicts of laws?

2 A. Yes.

3 Q. So it is your understanding that whatever this agreement
4 means, it's to be determined under Ecuadorian law?

5 A. Yes.

6 Q. Look at Exhibit 7, please. That is the go-to-jail memo.
7 Do you have that up there?

8 A. Yes.

9 Q. And that's, as I understand it, an e-mail from Julio Prieto
10 to you and to Luis Yanza and Pablo Fajardo?

11 A. Yes.

12 Q. All right. And the first page shows the translation, and
13 it talks about -- do you remember the circumstances in which
14 you first saw this letter, and what was he talking about?

15 A. I do remember the circumstances. He was talking about his
16 fear that by turning over documents in the United States via
17 the Stratus 1782, that it would violate their Ecuadoran law
18 obligations in Ecuador among local counsel.

19 Q. So the issue was if they gave confidential information of
20 their clients to a U.S. court that wanted it in the Stratus
21 1782 litigation, what was the risk, as you understood it?

22 MR. MASTRO: Objection.

23 THE COURT: Well, I'm going to sustain the objection,
24 but I imagine we are going to hear more about this.

25 Q. Well, what did you understand when you said apart from

D4gdche3

Donziger - cross

1 destroying the proceeding, all of us, your attorneys might go
2 to jail?

3 THE COURT: Sustained. We are not going to have his
4 understanding about that. It is not relevant to anything here.

5 MR. KEKER: Well, then I move to strike all the
6 comments about it in direct examination, your Honor.

7 THE COURT: Denied, unless you can bring my attention
8 specifically to something that you think opens the door to that
9 question.

10 MR. KEKER: I've put my recollection -- and I don't
11 have the transcript in front of me. My recollection is that
12 this was used to try to imply that this tactic, or whatever,
13 had been nefariously used in the past to deny justice in the
14 United States of America's courts at --

15 THE COURT: Look, there certainly was a suggestion
16 that -- more than a suggestion, I think your client admitted
17 it -- that there had been consideration, at sometime in 2010,
18 given to bringing a proceeding in Ecuador to shut down the 1782
19 case against Stratus and possibly others. I remember that.

20 MR. KEKER: I don't remember the part about shut down
21 the case, but I do remember the consideration to not having
22 documents from -- confidential documents from Ecuador produced,
23 and the inference on Mr. Mastro's side was this reference to go
24 to jail was something because they felt guilty about something.
25 And what I am trying to get at is the understanding that was

D4gdche3

Donziger - cross

1 had at the time, which is the issue was Ecuadorian law,
2 confidential documents being improperly disclosed in American
3 courts. It puts a completely given gloss on it than what
4 Mr. Mastro was trying to say.

5 THE COURT: Well, the question that I noted, the
6 question and answer, and possibly there is more context that I
7 didn't note, was this:

8 "Q Am I correct Mr. Donziger that in March 2010, Julio Prieto
9 wrote to you and Mr. Fajardo and Mr. Saenz and proposed that --
10 in fact said -- the Ecuadorian lawyers had decided, quote, to
11 file a writ of protection before a judge in Ecuador asking the
12 judge to write to the judge in Denver not to reveal the
13 correspondence with Stratus because this would affect our
14 fundamental rights?

15 "A Do I remember that? Is that your question?

16 "Q Yes, sir.

17 "A I have a recollection that happened, yes."

18 That's what I have here.

19 MR. KEKER: And then he went on to talk about the
20 e-mail and the go to jail and meet the inference --

21 THE COURT: Let's take a look.

22 MR. KEKER: You've got me. I don't have that. I
23 appreciate it. That is great.

24 (Pause)

25 THE COURT: It doesn't work as quickly as one would

D4gdche3

Donziger - cross

1 like.

2 (Pause)

3 Well, it went on:

4 "Q That was in the same mail Mr. Prieto said as Stratus
5 documents came out" -- and it looks like the word "if" might
6 have been dropped -- "we all go to jail, correct, sir?"

7 And then I see the reporter had included
8 parenthetically the word "if," so he was aware it had been left
9 out in the text.

10 "A I don't recall.

11 "Q He went on to tell you at that time, quote, this is an idea
12 that may not work but with -- perhaps with adequate support we
13 can do it. Do you remember that, sir, in the e-mail?"

14 And then Exhibit 7 was marked, and he was shown the
15 e-mail.

16 "Q Do you see where he writes to you about the Stratus
17 production ordered in Denver, that the effects are potentially
18 devastating in Ecuador, apart from destroying the proceeding,
19 all of us, your attorneys, might go to jail; do you see that?

20 "A I see where he wrote that.

21 "Q Isn't it the case he then proceeded to you -- proposed to
22 you and the others -- in fact, said it had already been
23 decided -- to avoid this, we have decided to file a writ of
24 protection before a judge in Ecuador asking the judge to write
25 to the judge in Denver not to reveal the correspondence because

D4gdche3

Donziger - cross

1 this would affect our fundamental rights; do you see that, sir?

2 "A Sir, I stipulate he wrote this e-mail. I don't know what
3 you're getting at."

4 And then it passed off into a discussion of Mr. Wray.

5 So do you have another question?

6 MR. KEKER: Are you talking to me, your Honor?

7 THE COURT: Yes. You.

8 MR. KEKER: Well, I guess not about that.

9 BY MR. KEKER:

10 Q. Did you at any time believe that there was anything wrong
11 with asking an Ecuadorian court -- somebody, an Ecuadorian
12 lawyer asking an Ecuadorian court for a ruling on a matter of
13 procedure or otherwise?

14 MR. MASTRO: Objection to form.

15 A. Absolutely.

16 THE COURT: Yes. I will sustain the objection to
17 form.

18 Q. Did you -- well, did you have -- I think you said you had
19 nothing to do with this Cordova litigation. Once you learned
20 about it and learned that Fajardo had gone to court, or
21 somebody had gone to court and they had gotten this ruling from
22 an Ecuadorian court, did you see anything wrong with that?

23 A. I did not.

24 Q. When you learned about it, did it strike you as something
25 that was done in bad faith?

D4gdche3

Donziger - cross

1 A. Not in the least.

2 Q. When you learned about it, did it strike you as --

3 THE COURT: Would you stipulate that Mr. Donziger will
4 testify, if asked, that he sees nothing wrong with anything
5 that was done on their side of the case? Maybe we could save
6 some time.

7 MR. MASTRO: Your Honor, that is obviously going to be
8 his testimony. I haven't been objecting each time because you
9 are going to let him make his record. But, yes, that is going
10 to be his testimony.

11 THE COURT: And I will, Mr. Keker, if this is the way
12 you want to use your time, I will let him do that.

13 MR. MASTRO: That is what he is going to say and then
14 I will cross him.

15 THE COURT: And you are welcome to do that.

16 MR. KEKER: Then I think I will. I'd like to
17 establish --

18 THE COURT: We'll take our lunch break here, it is a
19 quarter to 1, and I'll see you all at 2.

20 What is it, Mr. Mastro?

21 MR. MASTRO: Just two very quick things, your Honor.

22 Exhibits 3 through 7, I just ask that they be received
23 here. Those are the different e-mail communications.

24 THE COURT: Received.

25 (Plaintiff's Exhibits 3 through 7 received in

D4gdche3

Donziger - cross

1 evidence)

2 THE COURT: What is it, Mr. Kecker?

3 MR. KEKER: I wanted to ask you about a rule that is
4 different in different courts all over the United States.

5 Can I talk to my clients while he is on the stand?

6 THE COURT: No, sir.

7 MR. MASTRO: And, your Honor, one last thing.

8 He just testified he had a written communication in
9 January 2013 with the plaintiffs that he said informed him on
10 his thinking about his status on the case. January 2013,
11 exactly when they are getting the Court order in Ecuador about
12 not producing the documents.

13 I think he should have to produce that. I think he
14 has waived, and I think he should have to produce that document
15 forthwith.

16 MR. KEKER: He didn't say anything about a writing.
17 You should go back and check the record.

18 MR. MASTRO: "Written communication from Ecuador" was
19 the phrase he used in January of 2013 --

20 THE COURT: Let's see.

21 (Pause)

22 THE COURT: How long ago? Was this quite recent in
23 the testimony?

24 MR. KEKER: It was reasonably recent because it was
25 from me.

D4gdche3

Donziger - cross

1 MR. MASTRO: It was 10 to 15 minutes ago, your Honor.

2 THE COURT: And you are sure there was a reference to
3 January?

4 MR. MASTRO: I'm quite sure --

5 MR. KEKER: He said January; I think that is correct.

6 MR. MASTRO: Written communication from Ecuador in
7 January 2013 is what I took down.

8 THE COURT: Is this what you are referring to?

9 "Q Have the description of your duties been modified by
10 attorney-client communications from Ecuador, the descriptions
11 in the agreement?

12 "A Yes.

13 "Q And when did that happen most recently?

14 "A Maybe around January of this year."

15 Is that what you were referring to?

16 MR. MASTRO: That is what I was referring to, your
17 Honor.

18 THE COURT: All right. You are welcome to
19 cross-examine as to whether it was written or otherwise.

20 MR. MASTRO: Thank you, your Honor. Thank you very
21 much.

22 THE CLERK: All rise.

23 (Luncheon recess)
24
25

D4GJCHE4

Donziger - redirect

AFTERNOON SESSION

2:00 p.m.

(Hearing resumes)

(In open court)

THE COURT: Okay. Let's resume. The witness is reminded he is still under oath.

MR. KEKER: Good afternoon, your Honor. I have no further questions. Thank you.

THE COURT: Thank you. Mr. Mastro.

REDIRECT EXAMINATION

BY MR. MASTRO:

Q. Mr. Donziger, before the break you were asked by the Court whether your retention agreement had been modified or terminated by a written instrument. You testified "I don't know." Do you recall that testimony?

A. No.

Q. Do you know whether your retention agreement has been modified by a writing?

A. I don't believe it has.

Q. You're aware, are you not, that your retention agreement expressly provides that there can be no modification of it without a writing, correct, sir?

A. I am not aware of that.

Q. I refer you to Page 10, Paragraph 13.

MR. MASTRO: It is Exhibit 2 in this record, your

D4GJCHE4

Donziger - redirect

1 Honor.

2 THE COURT: I am sorry. Exhibit 2 in this record,
3 meaning Hearing Exhibit 2?

4 MR. MASTRO: Yes, Hearing Exhibit 2. Page 10,
5 Paragraph 13, modification in writing.

6 BY MR. MASTRO:

7 Q. Mr. Donziger, you were then asked by Mr. Keker whether your
8 duties have been modified in any way through an attorney-client
9 communication from Ecuador. Do you recall that?

10 A. Yes.

11 Q. Is that a communication in writing?

12 A. Yes.

13 MR. MASTRO: Your Honor, I would ask that the witness
14 have to produce the communication since he relied on it in his
15 testimony.

16 MR. KEKER: He didn't rely on any writing. He was
17 asked a general question. He has not waived any privilege,
18 your Honor. We object on attorney-client privilege grounds.

19 THE COURT: How is a modification of a contract for
20 which you are claiming legal effect attorney-client privilege?

21 MR. KEKER: The communication that he is referring to,
22 I am not sure what communication he is referring to, but if he
23 is referring to a communication with his clients, then it is
24 attorney-client privilege.

25 THE COURT: Well, this may be something I am going to

D4GJCHE4

Donziger - redirect

1 learn from you on, but when I went to law school, not all
2 communications from client to attorney or vice versa were
3 protected by privilege. Has there been some development of
4 which I am unaware?

5 MR. KEKER: There has, your Honor, a great broadening,
6 more than I understand the court accepts, of the concept of
7 what I left out in my voir dire, a communication for the
8 purpose of seeking legal advice.

9 The law as I understand it in general is that
10 virtually all conversations between counsel and client about
11 the scope of the representation, the representation, what
12 they're doing, getting information and so on, it falls into
13 that rubric of attorney-client privilege because it is for the
14 purpose of getting legal advice ultimately.

15 It doesn't have to be every single --

16 THE COURT: Do you have a case?

17 MR. KEKER: No. The only case I can remember is
18 Hickman versus Taylor. That is work product, your Honor. No,
19 I don't have a case. I am sure I do have a case, but I don't
20 have a case here in this Court.

21 THE COURT: Well, your view and mine are rather
22 different. I am not aware of any authority that takes it
23 anywhere close to where you are. Furthermore, I have not heard
24 anything about a communication involving a client here.

25 MR. KEKER: That is where I think we're going and that

D4GJCHE4

Donziger - redirect

1 is the problem.

2 THE COURT: If, as and when we ever get there, I am
3 sure you'll bring it to my attention. But you are saying or
4 your client is saying there is a writing that altered an
5 agreement which is before the court, and it seems to me if
6 there is, it is an operative fact and it's not privileged.

7 MR. KEKER: I believe --

8 THE COURT: This would be tantamount I suppose to some
9 investment banking firm claiming that an underwriting agreement
10 to bring out an issue of securities is attorney-client
11 privilege. It makes no sense to me at all.

12 MR. KEKER: If I may, your Honor, I am not sure of all
13 the facts, but I believe that the retention agreement that you
14 are looking at was produced pursuant to your order that he had
15 technically, because of his failure to file a privilege log in
16 a timely fashion --

17 THE COURT: There was no technicality at all.

18 MR. KEKER: No technicality? Anyway, you said he
19 waived his attorney-client privilege. All of that went to the
20 Second Circuit. The Second Circuit said there was this great
21 emergency; therefore, it was okay but we should be careful
22 about this in the future.

23 Now we are back here. The only reason you have that
24 first agreement is because of this waiver issue. We are not
25 waiving subsequent issues. We are not waiving -- this is 2010

D4GJCHE4

Donziger - redirect

1 he is talking about, and what is relevant to this hearing is
2 his control over Pablo Fajardo and so on starting at the time
3 in 2012 that they made their motion to the present. So we're
4 objecting on that ground, your Honor.

5 THE COURT: Okay. You are directed to produce the
6 writing your client has just spoken of and to do so forthwith.

7 MR. KEKER: Could I find out, talk to Mr. Donziger
8 about what he is referring to? I don't know. I don't have
9 such a writing.

10 THE COURT: After we're through with the examination.

11 MR. KEKER: Then I can't produce something --

12 THE COURT: You can't do it till then, yes, that is
13 certainly clear.

14 BY MR. MASTRO:

15 Q. Mr. Donziger, did you read the brief that your lawyer
16 submitted to this Court on March 26th in opposition to
17 Chevron's sanctions motion?

18 A. I believe I did. I am not a hundred percent sure.

19 Q. Are you aware that on Page 13 of that brief your lawyers
20 represented to this Court that the operative agreement in
21 effect is the retention agreement that you signed on January 5,
22 2011 that has been marked as Exhibit 2 in this hearing record?

23 A. No.

24 THE COURT: What document are you referring to?

25 MR. MASTRO: I am referring to the opposition brief

D4GJCHE4

Donziger - redirect

1 that they filed, your Honor, on sanctions.

2 THE COURT: This is the document 947 in the record?

3 MR. MASTRO: Yes, I believe so, your Honor.

4 THE COURT: It is Page 13?

5 MR. MASTRO: Yes, your Honor.

6 MR. KEKER: I am sorry, your Honor. I am looking at
7 Page 13. I don't know what he is talking about. Could I get,
8 by the way, my Chevron Volume I back from him?

9 THE COURT: Yes, you may.

10 MR. KEKER: Thank you. I am looking at Page 13, and
11 if it is there --

12 MR. MASTRO: 947 is the document, your Honor.

13 THE COURT: Yes. You might look at the first sentence
14 of the first full paragraph on Page 13.

15 MR. KEKER: Where does that say the operative
16 agreement of 2010?

17 THE COURT: It says in short Donziger and Fajardo's
18 retainer agreements and various other things.

19 MR. KEKER: What are the operative retainer
20 agreements?

21 THE COURT: Why don't you read the beginning of the
22 brief you filed. I think it is clear there.

23 MR. MASTRO: I will move on.

24 MR. KEKER: I don't think it is so clear. Let's stick
25 with this.

D4GJCHE4

Donziger - redirect

1 THE COURT: Mr. Mastro, I would like to know where, if
2 at all, earlier in that brief the antecedent of operative
3 retainer agreements appears.

4 MR. MASTRO: On Pages 11 and 12, your Honor, there are
5 references to the specific documents.

6 THE COURT: Yes, exactly on Page 11. It says the
7 first sentence of the second full paragraph, "Specifically
8 Donziger's operative retainer agreement makes clear that he is
9 the Ecuadorian plaintiff's representatives and he is employed
10 by Fajardo, Yanza and Amazon Defense Fund not vice-versa,
11 citing Docket No. 355-37, also known as Exhibit 1122.

12 MR. MASTRO: Correct, your Honor.

13 THE COURT: And, thus, there was -- and that document
14 is Hearing Exhibit 2. So there was a flat representation, Mr.
15 Kekker, in your brief that the operative retainer agreement was
16 Hearing Exhibit 2 and no suggestion that it had ever been
17 modified either orally or otherwise, right?

18 MR. KEKER: With respect to the -- no, that is not
19 right. What this is talking about is the operative retainer
20 agreement that deals with this question of who's who's agent.
21 It is dealing with agency. There is no -- and what it is
22 saying, the conclusion is that he doesn't have any agents in
23 Ecuador. The Ecuadorians are the principal and he is the
24 agent. That is what we are representing to you and that is all
25 we are representing to you.

D4GJCHE4

Donziger - redirect

1 THE COURT: Well, Mr. Keker, we'll see. Let's
2 proceed.

3 MR. MASTRO: Thank your Honor.

4 BY MR. MASTRO:

5 Q. Mr. Donziger, the modification you just referred to, that
6 didn't modify your compensation or what you're entitled to
7 under your retainer agreement that you entered into in January
8 5th of 2011, correct, sir?

9 A. I think I misspoke in my earlier testimony. After reading
10 Paragraph 13, I don't think what I described qualifies as
11 modification under this contract.

12 Q. So your compensation remains the same today as it was under
13 the retainer agreement dated January 5, 2011, correct, sir?

14 A. That's correct. My point is a larger one. I don't think
15 there was a modification under this paragraph.

16 Q. When we see the writing, we'll be able to tell.

17 Mr. Donziger, you testified under questioning from Mr.
18 Keker that you "work for Fajardo." Do you remember that
19 testimony?

20 A. Yes.

21 Q. Were you working for Fajardo when you wrote your book
22 proposal saying you are "the lead lawyer in the class action
23 trial that seeks damages for clean up Aguinda correctly being
24 heard by the Superior Court of Madiloba in Ecuador."

25 Were you working for Mr. Fajardo when you made that

D4GJCHE4

Donziger - redirect

1 representation, your book proposal you're the lead lawyer in
2 that case?

3 A. Yes.

4 MR. MASTRO: That is docket 9-9, at 234, your Honor.

5 BY MR. MASTRO:

6 Q. Were you working for Mr. Fajardo when you wrote Joe Coen in
7 July 2009 that the process "the process of the case is managed
8 by myself, Pablo Fajardo and Luis Yanza"?

9 A. Yes.

10 Q. Were you working for Mr. Fajardo when your lawyer told the
11 Second Circuit in 2011 that litigating and trying this case
12 without Steven Donziger is like staging a production of Hamlet
13 without Hamlet"?

14 A. What is your question?

15 Q. Were you working for Pablo Fajardo when your lawyer made
16 that representation?

17 A. Sir, let me make this simple for you. From the day I --

18 Q. It is a yes or no?

19 A. I can't answer yes or no.

20 THE COURT: Mr. Donziger, stop! Answer the question
21 yes or no. No speeches.

22 THE WITNESS: I am not going to answer yes or no.

23 THE COURT: I direct you to answer the question
24 directly.

25 THE WITNESS: I have always worked for Mr. Fajardo or

D4GJCHE4

Donziger - redirect

1 the lead Ecuador counsel while this case was in Ecuador.

2 BY MR. MASTRO:

3 Q. Were you working for Fajardo when you paid him \$50,000 in
4 June of 2011?

5 A. Yes.

6 Q. Mr. Fajardo doesn't pay your salary, does he, sir?

7 A. Actually, he does.

8 Q. He has written you checks, sir?

9 A. He controls the budget that pays monies to me for work I do
10 on this case, yes.

11 Q. So you consider him to pay your salary. Is that your
12 testimony here today?

13 A. The clients out of a case budget pay me.

14 Q. Am I correct, sir, that you have continued to raise money
15 from investors in 2011 and 2012?

16 A. On behalf of the clients, yes.

17 Q. You have raised more than 1.6 million since the beginning
18 of 2011 from at least two funders, DeLeon and Jarvis?

19 MR. KEKER: Objection, your Honor; outside of the
20 scope of the order. Limited to the following issues.

21 THE COURT: It goes to control.

22 MR. MASTRO: Correct, your Honor.

23 THE COURT: Overruled.

24 BY MR. MASTRO:

25 Q. Mr. Donziger --

D4GJCHE4

Donziger - redirect

1 A. That is not correct.

2 Q. -- am I correct that you have raised more than 1.6 million
3 since January 2011 to support the various litigations in
4 Ecuador and the United States?

5 A. I have helped the clients raise money to support the
6 litigations, yes.

7 Q. Has Mr. Fajardo himself brought in any funders for the
8 litigation?

9 A. He has helped.

10 Q. But you have had hundreds of communications with funders
11 since January 2011, correct?

12 A. I don't know how many it is.

13 Q. How many funders has Mr. Fajardo met with since January
14 2011, do you know?

15 A. I know of at least two, maybe more.

16 Q. Were those funders that you introduced Mr. Fajardo to?

17 MR. KEKER: Objection, your Honor; scope.

18 THE COURT: It goes to control. Overruled.

19 A. Those particular two, yes.

20 BY MR. MASTRO:

21 Q. Sir, it doesn't say anywhere in your retention agreement
22 that you work for Mr. Fajardo, does it, sir?

23 THE COURT: It speaks for itself. Move on.

24 BY MR. MASTRO:

25 Q. Can you cite to this Court any document anywhere where it

D4GJCHE4

Donziger - redirect

1 says you work for Mr. Fajardo?

2 A. There's a pattern of communications, some reflected in
3 documents, yes, that do reflect that, where I am getting orders
4 from Mr. Fajardo, yes.

5 Q. Don't you give him instructions on things to do, sir?

6 A. As I have already testified, I ask him to do things.
7 Sometimes he does them and sometimes he doesn't.

8 Q. Sir, let me ask you about the following.

9 You knew back in March 2011 from a letter Mr. Keker
10 showed you when you were testifying earlier that Mr. Fajardo
11 would not produce Ecuadorian documents and not submit to this
12 Court's jurisdiction, correct, sir?

13 THE COURT: Compound. Sustained.

14 BY MR. MASTRO:

15 Q. You knew from a letter you received from Mr. Fajardo back
16 in March 2011 that he would not produce Ecuadorian documents in
17 connection with this litigation, correct, sir?

18 A. I knew that was his position at that time.

19 Q. When you learned of the Cordova litigation from
20 Mr. Fajardo, did you know that Mr. Fajardo was a defendant in
21 that litigation?

22 A. No.

23 Q. Did you know who the plaintiff was in that litigation?

24 A. No.

25 Q. You didn't bother to ask him who the plaintiff was?

D4GJCHE4

Donziger - redirect

1 A. Sir, I already testified I knew nothing about this
2 substantive about that litigation other than what he told me in
3 passing he was going to seek a declaratory judgment.

4 Q. Would it have concerned you to know that the plaintiff in
5 the litigation was one of your clients that both you and
6 Mr. Fajardo represent and that the defendant in the litigation
7 was Mr. Fajardo who you already knew didn't want to produce
8 Ecuadorian documents in this litigation?

9 Would that have concerned you to know that those were
10 the parties, yes or no?

11 A. I rely on Pablo Fajardo's judgment in Ecuador to handle
12 issue of Ecuadorian law, so the answer to that would be no.
13 This is the first time I am hearing about it. On my initial
14 reaction just hearing about it, no.

15 Q. Would it have bothered you to know that the judge who
16 originally handled the case denied the application, denied the
17 application on reconsideration, and then when the matter was
18 sent back to him after an appeal, he recused himself?

19 MR. KEKER: Objection to the form of the question and
20 outside the scope. He said he didn't know, so whether it would
21 have bothered him to know --

22 MR. MASTRO: He testified --

23 THE COURT: Sustained.

24 BY MR. MASTRO:

25 Q. Mr. Donziger, would it have concerned you to know that

D4GJCHE4

Donziger - redirect

1 after the trial court entered the order that it did against
2 Mr. Fajardo, that he didn't even take an appeal?

3 MR. KEKER: The same objection, your Honor. It is
4 irrelevant whether it would have concerned him now. He
5 testified to facts. He did not know any of this back then --

6 MR. MASTRO: He testified, your Honor, it wasn't in
7 bad faith, that litigation --

8 MR. KEKER: Your Honor --

9 THE COURT: Mr. Keker, your adversary is now speaking.
10 It was reasonable for all of us to have concluded that you had
11 finished. Please don't talk over him.

12 MR. KEKER: Yes, sir.

13 THE COURT: What is it, Mr. Mastro?

14 MR. MASTRO: Your Honor, I would just like to inform
15 you he testified on a leading question the litigation wasn't in
16 bad faith, and now I am trying to probe whether, since he
17 doesn't know the underlying facts of what happened there, that
18 would have concerned him if he had actually known that thing.

19 THE COURT: Yes, but he has already said he knows
20 nothing about it.

21 MR. MASTRO: I'll move on.

22 THE COURT: He didn't exactly say that, but that's a
23 fair approximation for the moment.

24 MR. MASTRO: I'll move on, your Honor.

25 BY MR. MASTRO:

D4GJCHE4

Donziger - redirect

1 Q. Mr. Donziger, am I correct that -- strike that.

2 You've testified that you consider yourself to work
3 for Mr. Fajardo, but am I also correct that you stand to gain
4 more than three times the amount of money that he does if you
5 all ultimately collect any money on the Ecuadorian judgment?

6 A. Something of the sort.

7 Q. So you personally stand to gain more than \$1 billion if you
8 were to collect on the entirety of the Ecuadorian judgment, you
9 personally, correct, sir?

10 A. I don't know what the amount would be exactly, but it would
11 be a percentage of the recovery.

12 Q. And Mr. Fajardo's percentage of that recovery is less than
13 a third of what yours would be, correct?

14 A. I don't believe that's the case, no.

15 Q. Yeah. Sir, under Mr. Fajardo's retention agreement, he
16 gets 10 percent of the contingency fee. Isn't that correct,
17 sir?

18 A. I don't know.

19 MR. MASTRO: That is on Page 2, Paragraph 3 A, your
20 Honor, of Mr. Fajardo's retention agreement.

21 BY MR. MASTRO:

22 Q. Sir, am I correct that you get 31 percent of the total
23 contingency fee recovered?

24 MR. KEKER: Outside the scope. I object on that
25 ground.

D4GJCHE4

Donziger - redirect

1 THE COURT: It goes to control.

2 BY MR. MASTRO:

3 Q. Correct, Mr. Donziger?

4 A. I get a not insignificant portion of a contingency fee
5 payment the clients have set aside for lawyers and investors to
6 sustain the case, yes.

7 MR. MASTRO: On Pages 3 and 4 of Mr. Donziger's
8 retention agreement, Paragraph 3 A, your Honor.

9 BY MR. MASTRO:

10 Q. So you make more than three times what Mr. Fajardo makes on
11 this case, but you work for him. That is your testimony in
12 this Court?

13 A. Yes, it is.

14 Q. Mr. Donziger, you've said that there have been
15 communications that modify your role in this case, correct,
16 sir?

17 A. Yes.

18 Q. Yet you continue to go to Ecuador on average once a month,
19 correct, sir?

20 THE COURT: We have covered that, Mr. Mastro.

21 BY MR. MASTRO:

22 Q. In fact, you led the court to believe that you are not as
23 welcomed by the Ecuadorian lawyers as you used to be, correct?

24 A. I have testified to that truthfully. That is the case,
25 sir.

D4GJCHE4

Donziger - redirect

1 Q. Yet you, in fact, on average have gone to Ecuador more
2 since the beginning of 2011 than you did before 2011?

3 A. I don't believe that is true, sir.

4 THE COURT: I think we have covered it, haven't we,
5 Mr. Mastro?

6 MR. MASTRO: Yes, we have. My ratio records will
7 speak for themselves.

8 BY MR. MASTRO:

9 Q. Sir, you testified earlier that you "asked your attorneys
10 to write to Fajardo and ask him to please give you the files."

11 Do you recall that testimony?

12 A. Today?

13 Q. Yes.

14 A. Yes.

15 Q. Did you actually see the letter that your lawyer, Mr.
16 Keker, sent to Mr. Fajardo?

17 A. I did see it, yes.

18 Q. Did you review it in advance?

19 A. I don't recall if I did, but I trust Mr. Keker to put
20 together a letter that reflects what we had discussed.

21 Q. That he should please ask Mr. Fajardo to give you the
22 files?

23 A. Yes.

24 Q. Sir, I would like to show you the letter Mr. Keker actually
25 sent to Mr. Fajardo on February 14th, 2013. I'll mark this as

D4GJCHE4

Donziger - redirect

1 hearing Exhibit 8. Please review it for just a minute, sir,
2 and I have a few questions.

3 A. (Pause)

4 Q. Now, when you asked Mr. Keker to write to Fajardo to ask
5 him to please give you the files, did you expect him to write
6 that Mr. Donziger does not consider you, Mr. Fajardo, to be his
7 attorney nor his agent?

8 A. I did not, I never had a discussion at that level of detail
9 with Mr. Keker, sir.

10 Q. Is there anywhere in this letter where Mr. Keker actually
11 asked Fajardo to please give you, Steven Donziger, the files?

12 Do you see that anywhere in this letter, he asked him
13 to please give you the files?

14 A. Sir, this letter, the purpose of this letter was to get
15 documents consistent with the court's order and that is what
16 the letter reflects.

17 Q. And the only thing remotely making any kind of ask of
18 Mr. Fajardo in this letter by Mr. Keker was "I write on behalf
19 of Mr. Donziger and his firm to ask you to notify me
20 immediately whether or not you or any other persons or entities
21 associated with the litigation of Aguinda v. Chevron will
22 provide us the materials sought by Chevron on the schedule set
23 forth by Judge Kaplan in the enclosed order."

24 Correct, sir?

25 A. That's correct.

D4GJCHE4

Donziger - redirect

1 Q. Was that what you had in mind when you asked Mr. Keker to
2 ask Fajardo to please give you the files? That is what you had
3 in mind?

4 A. What I had in mind is for Mr. Keker write a letter
5 reflecting this Court's order, and that is exactly what he did.

6 Q. You consider that to be exactly what he did? Okay.

7 A. This letter --

8 Q. Let me ask you about Mr. Fajardo's response.

9 You were asked whether you helped Mr. Fajardo write
10 his response, and you said no, you didn't. Mr. Fajardo didn't
11 need you to help him, did he, sir?

12 A. I have no idea, sir.

13 Q. Because Mr. Keker had already told him in his letter what
14 to say, hadn't he, sir?

15 A. I don't know what you're talking about.

16 Q. Now I am going to show you Mr. Fajardo's response. I will
17 mark that Exhibit No. 9 to his hearing.

18 A. (Pause)

19 Q. Is this Mr. Fajardo's February 18th, 2013 response to Mr.
20 Keker's letter?

21 A. It looks like a translation of it.

22 Q. So after Mr. Keker wrote to Mr. Fajardo telling him that,
23 "Mr. Donziger does not consider you to be his attorney nor his
24 agent," Mr. Fajardo writes back, "we are not attorneys for
25 Steven Donziger." Do you see that, sir?

D4GJCHE4

Donziger - redirect

1 A. Yes.

2 Q. That is in the very first numbered paragraph, correct, sir?

3 A. Yes.

4 Q. And the very first sentence that he writes in that first
5 point in his letter is, "It is obvious that Judge Lewis Kaplan,
6 induced by Chevron Corporation, is very much mistaken in
7 asserting we attorneys in Ecuador are attorneys and agents of
8 Mr. Steven Donziger." Do you see that, sir?

9 A. Yes, I do.

10 Q. You didn't have any doubt whatsoever, and your attorneys
11 didn't have any doubt whatsoever, what Mr. Fajardo's response
12 to Mr. Keker's February 14th letter was going to be, did you,
13 sir?

14 A. That is not correct, sir.

15 Q. Did you talk to Mr. Fajardo?

16 A. I am not finished.

17 THE COURT: Let him finish.

18 MR. KEKER: Excuse me!

19 THE COURT: Thank you, Mr. Keker. I had the point
20 before you rose. Let him finish.

21 A. I expected him to maintain the position he earlier
22 communicated to Judge Kaplan and to me but, no, I did not know
23 what he would put in this letter.

24 BY MR. MASTRO:

25 Q. Did you tell Mr. Fajardo Mr. Keker's letter would be

D4GJCHE4

Donziger - redirect

1 coming?

2 A. I don't recall. I might have. I don't remember.

3 Q. Do you know why your lawyer, Mr. Keker, in then telling the
4 court in a filing on February 20th what had transpired between
5 himself and Mr. Fajardo, do you know why he wrote that "in an
6 abundance of caution" I wrote to Mr. Fajardo? Do you know why
7 he wrote that?

8 A. No.

9 Q. Sir, as we sit here today, it's your testimony that --

10 MR. KEKER: Objection to form, your Honor.

11 MR. MASTRO: I will rephrase.

12 THE COURT: Rephrase.

13 MR. MASTRO: I'll rephrase, your Honor.

14 BY MR. MASTRO:

15 Q. Mr. Donziger, am I correct that -- strike that.

16 Mr. Donziger, is there any steps of which you're aware
17 that your lawyers took to obtain documents from your Ecuadorian
18 co-counsel in Ecuador before Mr. Keker wrote this one letter on
19 February 14, 2013?

20 A. I don't -- I am not aware of any other efforts by them.

21 MR. MASTRO: Thank you, Mr. Donziger. No further
22 questions.

23 THE COURT: Mr. Keker. I am assuming the other
24 defendants don't wish to examine. Is that right?

25 MR. SMYSER: Your Honor, I have no questions of

D4GJCHE4

Donziger - redirect

1 Mr. Donziger.

2 THE COURT: All right. Thank you.

3 RECROSS EXAMINATION

4 BY MR. KEKER:

5 Q. Mr. Donziger, referring you to Exhibit 8, my letter to
6 Mr. Fajardo, dated Valentine's Day of this year, does it quote
7 Judge Kaplan's order in the third paragraph?

8 A. Yes.

9 Q. Does that order talk about documents in the possession,
10 custody and control of their Ecuadorian attorneys and agents?

11 A. Yes.

12 Q. Did you at the time of this letter or at any time consider
13 that you had attorneys or agents in Ecuador that were your
14 attorneys or agents?

15 A. No.

16 Q. Do you know whether or not, when we argued against this
17 motion, your lawyers made that point, that he doesn't have
18 attorneys or agents? If you don't know, it is all right, never
19 mind.

20 In the next paragraph, the fourth one, I said while
21 Mr. Donziger does not consider you to be his attorney nor his
22 agent, Judge Kaplan or Chevron may disagree. Therefore, due to
23 this Court's order, I write on behalf of Mr. Donziger and his
24 firm to ask you, blah, blah, blah.

25 Did you believe that Mr. Fajardo was your agent when

D4GJCHE4

Donziger - recross

1 we asked him to consider whether or not he wanted to follow
2 this Court order?

3 A. No, I don't believe he has ever been my agent.

4 Q. Now let's turn to his response. We'll go through all the
5 details. Some of it is fairly harsh, but he makes the point,
6 Mr. Mastro pointed out we are not attorneys for Donziger. This
7 is completely untrue.

8 He goes on to say I am the attorney and sole legal
9 representative of the complainants in the lawsuit filed by
10 Aguinda et al against Chevron Corporation.

11 Is that true, in Ecuador he is the sole legal
12 representative appearing in court down there?

13 A. Yes.

14 Q. Do you appear in court in Ecuador?

15 A. No.

16 Q. Do you have any legal control over that proceeding to
17 appear, file papers, do anything down there?

18 A. No.

19 Q. Are you authorized to practice law in Ecuador?

20 A. No.

21 Q. He goes on to say I am the person with authorization of the
22 complainants to hire --

23 THE COURT: Mr. Keker, I would appreciate it if you
24 slow down. I can't listen as fast as you can talk.

25 MR. KEKER: Nobody can, your Honor. I am sorry. I

D4GJCHE4

Donziger - recross

1 beg your pardon. The court reporter doesn't appreciate it
2 much, either.

3 BY MR. KEKER:

4 Q. He goes on to say I am the person with authorization of the
5 complainants to hire attorneys in various parts of the world to
6 defend their rights and interests. We, the complainants and I,
7 requested the services of attorney Steven Donziger to
8 coordinate certain legal actions in the United States.

9 Is that true?

10 A. Yes.

11 Q. Therefore, Steve Donziger is our attorney. Mr. Donziger
12 has never been nor will he be the person who gives instructions
13 to the complainants or their attorneys, as Judge Kaplan
14 mistakenly asserts in his orders.

15 Forget about the last clause. Is that true, you have
16 never been nor will he be the person who gives instructions to
17 the complainants?

18 A. That's correct.

19 Q. Look at your retention agreement, would you please, that
20 was marked I guess as Exhibit 2. In the last whereas clause on
21 the first page, do you see where it says whereas by virtue of
22 having acted as the primary United States Attorney on behalf of
23 the plaintiffs to date, the plaintiffs desire to appoint Steven
24 R. Donziger, Esquire to act as plaintiff's U.S. representative
25 defined below with such responsibilities as are set forth below

D4GJCHE4

Donziger - recross

1 and to cooperate in such capacity with Pablo Fajardo Mendoza,
2 Esquire and Luis Yanza, foregoing collectively with any
3 successors thereto, the "other plaintiff's representatives."

4 Do you see that?

5 A. Yes.

6 Q. Did you understand your retention agreement meant that you
7 were working for the plaintiffs in Ecuador and were co-counsel
8 with -- and Mr. Fajardo was also working for those plaintiffs
9 in Ecuador?

10 A. Yes.

11 Q. You're an attorney working for Ecuadorian nationals. Is
12 that what you understood?

13 A. That's correct, with the caveat that I also have you,
14 Mr. Fajardo, as their authorized legal representative, so much
15 of my contact was with him on behalf -- and he operated on
16 behalf of the clients.

17 Q. On Page 3 of your retainer agreement, just above where it
18 says No. 3 fees and expenses, do you see where that last
19 sentence says, "The plaintiff's U.S. representative may not
20 enter into agreements," do you see where I am reading?

21 A. Page 3?

22 Q. Page 3, and it is the last paragraph --

23 A. I see it.

24 Q. -- of Paragraph 2. The last couple of sentences say the
25 plaintiff's are U.S. representatives may not enter into

D4GJCHE4

Donziger - recross

1 agreements, settlements or negotiations with representatives,
2 agents, lobbyists or any other persons associated with Chevron
3 without authorization and direction from the plaintiffs.

4 Who are the plaintiffs in that sentence?

5 A. They're the individuals in Ecuador from whom I take
6 direction, Mr. Fajardo being the representative of the
7 plaintiffs.

8 Q. Then it goes on to say this authorization and direction may
9 be given by the other plaintiff's representative in the
10 Republic of Ecuador. That is a defined term. We looked at it,
11 that is Fajardo and Yanza, right?

12 A. Yes.

13 Q. Who is working for whom under this retention agreement?

14 A. I'm working for them.

15 Q. And then without respect -- I don't see anything in my
16 letter about this, but in Mr. Fajardo's letter back, he writes
17 in Paragraph No. 2 about the court of the Honorable Louis
18 Kaplan has no jurisdiction over me or over my work team in
19 Ecuador. Do you see that? It is Exhibit 9?

20 A. Yes.

21 Q. The last couple of sentences there is, "I have no
22 obligation to comply with orders from foreign courts which have
23 no jurisdiction over me. The same is applicable to my
24 Ecuadorian work team made up of Ecuadorians working in Ecuador
25 that has worked on different phases of the lawsuit against

D4GJCHE4

Donziger - recross

1 Chevron."

2 Was that your understanding of the control situation
3 with respect to what happened in Ecuador?

4 MR. MASTRO: Objection to form.

5 THE COURT: I didn't hear an objection. Is there an
6 objection?

7 MR. MASTRO: Objection to the form of the question,
8 your Honor.

9 THE COURT: Overruled. Answer it.

10 BY MR. KEKER:

11 Q. Is that your understanding?

12 A. Yes, that is my understanding.

13 Q. And then he goes on to talk about the Constitution
14 expressly prohibiting and describing an offense defined in the
15 case of providing requested information and says -- did you
16 suggest any of the information that he provides in this
17 paragraph to him?

18 A. No.

19 Q. He says current Ecuadorian law requires attorneys like
20 myself and my work team to respect the principle of
21 confidentiality and professional secrecy. In my letter of
22 August 14, 2012 to Messrs. Camacho and Piaguaaje, I explained
23 these arguments which are reasonably have been ignored by Judge
24 Kaplan.

25 Did you know what he was talking about communicating

D4GJCHE4

Donziger - recross

1 with couple of his clients and your clients back in August of
2 2012 about this subject?

3 A. I knew that was his general position. I am not sure I knew
4 about this letter he is referring to.

5 Q. Then Paragraph 4 says the information does not belong only
6 to those two, Camacho and Piaguaje?

7 A. Yes, I understood that to be the case.

8 Q. Did you suggest that he put that in this letter?

9 A. No.

10 Q. Then he says there's an order from a competent court
11 prohibiting us from complying with orders from Judge Kaplan.
12 He talks about that. Did you suggest he put that in this
13 letter?

14 A. No.

15 Q. And he goes on with some further harsh language. Did you
16 suggest any of the rest of the language, the comment about
17 xenophobic attitudes and so on?

18 A. No.

19 Q. Do you know whether or not what Mr. Mastro calls migration
20 records, people coming and going from Ecuador, are available to
21 the public?

22 A. I don't believe they are. I think they're private.

23 MR. KEKER: Nothing further.

24 THE COURT: Mr. Mastro.

25 REDIRECT EXAMINATION

D4GJCHE4

Donziger - redirect

1 BY MR. MASTRO:

2 Q. Mr. Donziger, you just testified that under your retention
3 agreement and Mr. Fajardo's retention agreement, plaintiff's
4 representatives were yourself, Mr. Fajardo and Mr. Yanza,
5 correct, sir?

6 A. Yeah. I don't know if it is limited to that but, yes, I
7 think all three of us were.

8 Q. Described as representatives?

9 A. Yes.

10 Q. Correct?

11 Now, you know, sir, that in Chevron's first request
12 for production of documents, Docket No. 895-1, the instruction
13 was to produce documents in the possession of defendant or
14 subject to the custody or control of defendant, including
15 documents in the possession, custody --

16 THE COURT: Slow down.

17 MR. MASTRO: -- of defendant's agents, attorneys or
18 representatives, including but not limited to attorneys in this
19 action, attorneys in the litigation, Pablo Fajardo Mendoza,
20 Luis Yanza, Julio Mendez, (inaudible) Brian Parker, Joseph Coen
21 and -- (inaudible). That was the instruction?

22 A. Yes.

23 Q. Now, sir, you said you also considered Mr. Fajardo to be
24 the authorized legal representative of plaintiffs, correct?

25 A. Yes.

D4GJCHE4

Donziger - redirect

1 Q. Plaintiffs being the 47 Aguinda individual-named
2 plaintiffs, correct?

3 A. Yes.

4 Q. That is because he had powers of attorney for all 47 of
5 them, correct?

6 A. I believe so.

7 Q. With those powers of attorney, he had the right to make
8 commitments on their behalf, correct?

9 A. He had the right to make commitments subject to those
10 powers. I think they were not limited rights but, yes, he
11 could make --

12 Q. You said when they were referring to client communications,
13 that was really communications you had with Mr. Fajardo as the
14 authorized representative of those 47 Aguinda plaintiffs
15 because of the powers of attorney he had, correct, sir?

16 A. That's correct.

17 Q. So you never actually spoke to any of the 47 individual
18 Aguinda plaintiffs about whether they would authorize the
19 release of the Ecuadorian documents in connection with this
20 litigation, did you, sir?

21 A. I did not.

22 Q. Sir, am I also correct that -- strike that.

23 So one time you're aware Mr. Fajardo went to all 47 of
24 the Aguinda plaintiffs was to get powers of attorney from each
25 of them in late 2010 after Chevron challenged the

D4GJCHE4

Donziger - redirect

1 representation status, correct, sir?

2 A. Yes.

3 Q. And a second time Mr. Fajardo went to the 47 individual
4 Aguinda plaintiffs was to ask them whether they would consent
5 to the release of the Ecuadorian documents, is that correct,
6 sir?

7 A. I don't know what happened or what he did at that point so
8 I can't testify to that. I have no knowledge of that.

9 Q. You don't know whether he actually went to the 47, correct?

10 A. For this purpose, I don't know.

11 Q. Can you name any other time, any other time when
12 Mr. Fajardo polled the 47 Aguinda plaintiffs before he made a
13 decision under his powers of attorney?

14 A. I will say that it takes weeks to poll 47 people who live
15 in the jungle. I know on occasion Mr. Fajardo gathers up,
16 tries to gather up the people or painstakingly goes to visit
17 them one-by-one.

18 Through the years this has happened on occasion. It
19 is very burdensome. It doesn't happen often. I can't remember
20 any time since getting the power of attorney, but I don't know
21 if he did it in this instance or not.

22 Q. Sir, am I correct that Mr. Fajardo also had obligations to
23 you under his retention agreement as a representative of the
24 plaintiffs, correct, sir?

25 A. He did have such obligations, but not such that would

D4GJCHE4

Donziger - redirect

1 override Ecuadorian law.

2 THE COURT: Mr. Donziger, you had finished after the
3 word "obligations." The rest of it is unresponsive and
4 stricken.

5 BY MR. MASTRO:

6 Q. He had an obligation to cooperate with you?

7 THE COURT: We have been all over this, Mr. Mastro.

8 MR. MASTRO: I understand, your Honor.

9 Q. The fact he had --

10 THE COURT: Let's act on that understanding.

11 BY MR. MASTRO:

12 Q. Mr. Donziger, you said in response to Mr. Kecker's questions
13 you never appeared in court in Ecuador. Do you recall that
14 testimony?

15 A. Yes.

16 Q. Referring you to the movie crude and the crude outtakes,
17 you did appear before a judge in Ecuador, didn't you, sir?

18 A. That was not a formal proceeding, sir. I never appeared in
19 court in Ecuador.

20 Q. You argued in judge's chambers for him to quash a subpoena,
21 correct?

22 A. That was not a formal appearance, sir.

23 THE COURT: Answer the question.

24 A. That clip in the movie speaks for itself. Yes, I argued
25 before a judge in an informal setting. I did not and have

D4GJCHE4

Donziger - redirect

1 never appeared in court in Ecuador on behalf of my clients in
2 any formal way.

3 Q. You would agree, would you not, Mr. Donziger, that in the
4 hundreds of hours of crude outtake footage, you and Mr. Fajardo
5 and Mr. Yanza and Mr. Saenz and Mr. Prieto, you have many
6 attorney-client communications, confidences of your clients on
7 those outtakes, correct, sir?

8 A. There were, those outtakes captured meetings and
9 discussions between lawyers, yes.

10 Q. And were you violating Ecuadorian secrecy law when you
11 allowed -- and Mr. Fajardo allowed -- those hundreds of hours
12 of crude outtake footage to be taken where you were revealing
13 your client's confidences before the cameras?

14 Were you violating Ecuadorian secrecy law then?

15 A. I can't answer that question, sir.

16 MR. MASTRO: No further questions.

17 MR. KEKER: No questions your Honor.

18 THE COURT: You may step down, Mr. Donziger. You are
19 subject to recall.

20 (Witness excused)

21 THE COURT: Who will be the next witness?

22 MR. MASTRO: Your Honor, we call, Chevron calls Jarod
23 Stewart.

24 THE COURT: All right. My colleague will be doing the
25 examination, your Honor.

D4GJCHE4

Donziger - redirect

JAROD STEWART,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. NEUMAN:

Q. Good afternoon, Mr. Stewart.

A. Good afternoon.

MS. NEUMAN: May I approach the witness to hand him the declaration he submitted to the court, dated March 26th, 2013, Docket No. 951?

THE COURT: Yes.

MR. MASTRO: While Ms. Neuman approaches, I want to make sure I moved for Exhibits 8 and 9 to be received as part of the records.

THE COURT: They're received.

(Plaintiffs' Exhibits 8 and 9 received in evidence)

MR. KEKER: While we're doing that, I assume the papers that have been filed and the exhibits are all part of this hearing, but I specifically want to move in the ones that I referred to, the exhibits that were attached to the motion. I guess I assumed that --

THE COURT: Whatever is in the record in general is fair game on this from beginning to end.

MR. KEKER: Yes, sir. Thank you.

THE COURT: And I mean the whole record.

D4GJCHE4

Donziger - redirect

1 BY MS. NEUMAN:

2 Q. Mr. Stewart, you are currently an associate at Smyser
3 Kaplan. Is that correct?

4 A. Yes.

5 Q. You are involved in that firm's representation of Mr.
6 Camacho and Mr. Piaguaje in this action?

7 A. I am.

8 Q. When did Smyser Kaplan begin representing Mr. Camacho and
9 Mr. Piaguaje in this action?

10 A. My understanding is that the representation began in the
11 summer of 2011, June or July.

12 Q. Were you involved from the beginning of the representation,
13 sir?

14 A. I was not.

15 Q. When did you become involved in the matter?

16 A. Around late July of 2011.

17 Q. Were you the associate at Smyser Kaplan primarily
18 responsible for preparing Mr. Camacho's and Mr. Piaguaje's
19 responses to Chevron's first set of request for production in
20 this action, served in June of 2012?

21 A. Request for production, I was not.

22 Q. Did you work on the responses to the request for
23 production, Mr. Stewart?

24 A. I may have reviewed them and provided comments, but I was
25 not the principal associate or lawyer working on those.

D4GJCHE4

Donziger - redirect

1 Q. Who was the principal lawyer working on those, if you know?

2 A. I don't recall.

3 Q. Did you ever discuss the request for production of
4 documents with Mr. Camacho and Mr. Piaguaje?

5 A. I did.

6 Q. Were you the lawyer who was responsible for doing that
7 aspect of responding, discussing the request for the client?

8 A. Yes, I was.

9 Q. When did you first discuss the request with your clients?

10 A. I can't recall the exact date, but it would have been
11 sometime after the requests were served in the fall.

12 Q. If the requests were served in the summer of 2012, can you
13 give us an estimate of when you would have talked to your
14 clients?

15 A. It would have been a number of weeks after the requests
16 were served.

17 Q. When you spoke to your clients, did you discuss with them
18 the need to produce the documents of their Ecuadorian agents,
19 their Ecuadorian lawyers?

20 A. Yes, that wasn't the first time I talked to them about
21 that.

22 Q. When was the first time you talked to them about it?

23 A. I met with Mr. Camacho and Mr. Piaguaje in Lago Agrio near
24 Ecuador in the Fall of 2011.

25 Q. In the Fall of 2011, did you discuss with your clients

D4GJCHE4

Donziger - redirect

1 producing documents from their Ecuadorian lawyers?

2 A. I did.

3 Q. Was that in connection with discovery requests that were
4 pending in Count 9 at that time?

5 A. That was.

6 Q. In 2011, did your clients gather any documents from their
7 Ecuadorian counsel?

8 A. I don't believe they did.

9 Q. Do you know with certainty one way or the other?

10 A. I don't. I know that our clients did provide documents
11 that they had in their personal possession in 2011.

12 Q. Did you have any dealings in 2011 with your client's
13 Ecuadorian counsel on the issue of producing documents in
14 connection with Count 9?

15 A. I did. I spoke with Mr. Fajardo.

16 Q. Do you recall when in 2011 you spoke with Mr. Fajardo about
17 producing documents?

18 A. I've spoken, probably the first time would have been in
19 July of 2011.

20 Q. Were you requesting that he produce documents at that time,
21 Mr. Fajardo?

22 A. I was asking him for documents to produce to Chevron and
23 any documents we could get that would be helpful to represent
24 our clients.

25 Q. At that time in July 2011 did Mr. Fajardo provide you with

D4GJCHE4

Donziger - redirect

1 any documents to either produce to Chevron or to assist in your
2 defense of your clients in this action?

3 A. Mr. Fajardo provided some documents.

4 I believe some that he had received from Mr. Camacho
5 and Piaguaje and some other documents that I believe were
6 public documents, and everything that we received from Camacho
7 or Piaguaje or from Mr. Fajardo was produced or put on a
8 privilege log.

9 Q. Other than providing you with documents that he had
10 received from your mutual clients, Mr. Camacho and
11 Mr. Piaguaje, and the public documents, did Mr. Fajardo provide
12 you with anything else in July of 2011?

13 A. To the best of my recollection, nothing else in July 2011.

14 Q. Did Mr. Fajardo relate to you in July of 2011 that he
15 believed he was unable to produce documents in response to
16 discovery requests from the United States?

17 A. Yes, he did at some point. Whether it was July or August,
18 I couldn't tell you, but I do know it was one of those two
19 months, during one of my first visits to Ecuador.

20 Q. Did you do that in writing or orally?

21 A. That was orally.

22 Q. In July of 2011, what reason did Mr. Fajardo give for being
23 unable to produce documents in the Ecuadorian client files at
24 Selva Viva?

25 A. Mr. Fajardo stated that he represented a group of clients

D4GJCHE4

Donziger - redirect

1 and that without the consent of the full group, he could not
2 provide those documents to myself or other counsel for Messrs.
3 Camacho and Piaguaje.

4 Q. Did he have any other reason for being unable to produce
5 the documents at that time?

6 A. He referred to provisions of Ecuadorian law that would
7 subject him to penalties. I don't recall the exact provisions,
8 but it was discussed at that time in July or August of 2011.

9 Q. In July of 2011 did Mr. Fajardo tell you that if all 47
10 clients consented, he then would be able to produce his files?

11 A. I don't recall.

12 Q. In 2011 did you consult on behalf of your clients any
13 Ecuadorian lawyers other than Mr. Fajardo on the issue of your
14 client's rights to access their Ecuadorian lawyer's files?

15 A. I did not.

16 Q. Do you know whether anyone at Smyser Kaplan did?

17 A. I don't know.

18 Q. Were you also the associate at Smyser Kaplan primarily
19 responsible for preparing Mr. Camacho's and Mr. Piaguaje's
20 responses to Chevron's first set of interrogatories in this
21 action?

22 A. I was one of the associates who worked on the responses to
23 interrogatories, yes.

24 Q. Are you fluent in Spanish, Mr. Stewart?

25 A. Yes, ma'am.

D4GJCHE4

Donziger - redirect

1 Q. Am I correct you're able to read, write and speak fluently
2 in Spanish?

3 A. Yes. I wouldn't say my Spanish is perfect, but I'm able to
4 communicate both orally and in writing.

5 Q. You were the person who translated the interrogatories for
6 Mr. Camacho and Mr. Piaguafe to respond to. Is that right?

7 A. Yes, I was.

8 Q. Is it also accurate that of all the lawyers at Smyser
9 Kaplan, you handled the majority of the contact between Smyser
10 Kaplan and your client's Ecuadorian counsel?

11 A. No. Mr. Veselka and Mr. Smyser also speak Spanish,
12 although not as fluently as myself, so both of them have
13 handled contacts with Mr. Fajardo, but I've been involved with
14 many of the contacts with Ecuadorian counsel.

15 Q. Are any of your client's Ecuadorian counsel fluent in
16 English?

17 A. Mr. Saenz speaks English fairly well.

18 Q. Any one else?

19 A. No, not that I can think of.

20 Q. During the course of your representation of Mr. Camacho and
21 Mr. Piaguafe in this action, on how many occasions have you met
22 with your Ecuadorian counsel in person?

23 A. In person, at least 7 or 8 times.

24 Q. Which of the Ecuadorian counsel have you met with?

25 A. I have met in person with Pablo Fajardo, Juan Pablo Saenz

D4GJCHE4

Donziger - redirect

1 and Luis Prieto.

2 Q. Have all those meetings been in Ecuador?

3 A. Yes.

4 Q. Is it fair to say you communicated extensively with your
5 client's Ecuadorian counsel over the past two years in
6 defending them in this action?

7 A. In defending whom?

8 Q. Mr. Piaguaje and Mr. Camacho?

9 A. I communicate with Ecuadorian counsel as required by the
10 circumstances of the case. I don't know that I would call it
11 extensively.

12 Q. Could you estimate the number of times that you've
13 exchanged e-mails with Ecuadorian counsel?

14 A. It just depends on the flow of the case. When it is a busy
15 time, maybe once a day, but that's pretty rare. Probably more
16 like a couple of times a month is my best guess.

17 Q. Could you estimate your level of phone interaction with
18 your client's Ecuadorian counsel?

19 A. Probably similar in terms of if there are busy periods in
20 the case, there may be one call a week, but there have been
21 time periods where I have not spoken with them by phone for a
22 month or two.

23 Q. Have your client's Ecuadorian counsel generally been
24 cooperative in assisting you in defending Mr. Camacho and
25 Mr. Piaguaje in this action?

D4GJCHE4

Donziger - redirect

1 A. Generally, Mr. Fajardo responds to e-mails and phone calls,
2 yes.

3 (Continued on next page)

D4gdche5

Stewart - direct

1 Q. And during your representation of Mr. Camacho and
2 Mr. Piaguaje in this action, Ecuadorian counsel have provided
3 you with documents to use in the defense of your clients,
4 correct, from Ecuador?

5 A. As part of our representation we've requested documents on
6 many occasions, and Mr. Fajardo and Mr. Saenz and Mr. Prieto
7 have chosen what documents that they believe they are able to
8 share with us based on the provisions of Ecuadorian law.

9 Q. Well, Mr. Stewart, when you asked for a document from
10 Mr. Fajardo and Mr. Saenz separate from these document
11 production requests, have they provided the documents you've
12 requested?

13 A. Usually no.

14 Q. Can you give me -- let me withdraw that.

15 Are there times when you've requested information from
16 Ecuadorian counsel that they have provided you that information
17 and then you have used that information in defense of
18 Mr. Camacho and Mr. Piaguaje in this action?

19 A. It depends on how broadly you define "information." I
20 mean, are you talking about documents?

21 Q. Have they ever provided you -- let's start with documents.

22 Had they provided you with documents that you then
23 used in this action in defense of your clients?

24 A. Mr. Fajardo, as I said, gave our firm documents in 2011
25 that were documents that he had gathered from our two common

D4gdche5

Stewart - direct

1 clients, Camacho and Piaguaje, and public documents. I know
2 that we produced those. I believe, to the best of my
3 recollection, some of those may have been filed in conjunction
4 with various motions in the case.

5 Apart from that, I cannot recall any specific document
6 that we have filed. There may be but I just can't think of
7 one.

8 Q. You can't think of any other documents that you've used in
9 the defense of this case that you've received from Ecuadorian
10 counsel?

11 A. No, I can't.

12 Q. Did you receive the Zambrano declaration from Ecuadorian
13 counsel?

14 A. Yes.

15 Q. And have you filed that Zambrano declaration in this
16 action, sir?

17 A. We did file that declaration in response to the summary
18 judgment for our clients.

19 Q. And you received the Zambrano declaration from Ecuadorian
20 counsel after the Cordova Court issued its order, correct?

21 A. We did.

22 Q. And who among your clients, Ecuadorian counsel, sent you
23 the Zambrano declaration?

24 A. Mr. Fajardo.

25 MS. NEUMAN: Speaking of Mr. Fajardo, I would like to

D4gdche5

Stewart - direct

1 approach the witness and provide him a copy of Mr. Fajardo's
2 retention agreement.

3 THE COURT: All right. And this is which exhibit?

4 MS. NEUMAN: Exhibit 1 for the purposes of this
5 hearing, your Honor.

6 BY MS. NEUMAN:

7 Q. Mr. Stewart, Exhibit 1, do you have that in front of you
8 now, sir?

9 A. I do.

10 Q. This is Mr. Fajardo's retention agreement dated January 5,
11 2011.

12 And in connection with your representation of
13 Mr. Camacho and Mr. Piaguaje, have you reviewed this document
14 before?

15 A. I have seen this document before. I have not reviewed it
16 in great detail.

17 Q. Let me direct your attention to paragraph 1 of the
18 agreement that provides that "Mr. Fajardo will cooperate and
19 coordinate with any other lawyers or law firms retained by the
20 plaintiffs in connection with the litigation (whether such
21 efforts are to occur in Ecuador, the United States or
22 elsewhere)."

23 Do you see that, sir?

24 A. I do.

25 Q. And in your understanding, is Smyser Kaplan included among

D4gdche5

Stewart - direct

1 the other law firms retained by the plaintiffs for the purposes
2 of this agreement?

3 A. I wasn't involved in the retention but I know that we have
4 been retained by Camacho and Piaguaje.

5 Q. Do you know whether Mr. Camacho and Piaguaje signed the
6 retainer, or whether someone else signed it on their behalf?

7 A. I do know Mr Camacho and Piaguaje signed the retainer.
8 I've seen it.

9 Q. Did Mr. Fajardo also sign the retainer?

10 A. I believe so.

11 Q. That is a yes?

12 A. I believe so.

13 Q. If you look at the fourth whereas clause on Exhibit 1, do
14 you see that it defines other plaintiffs' representatives as
15 Donziger, Yanza, and any successors?

16 THE COURT: Ms. Neuman, haven't we really been all
17 through this, and what is the use of doing it with this
18 witness?

19 MS. NEUMAN: I was going to ask, your Honor, if they
20 have undertaken to assert any of their clients' rights under
21 this agreement to obtain access.

22 THE COURT: OK. Go ahead. Go directly to it.

23 Q. Do you see that, Mr. Stewart?

24 A. I do see it.

25 Q. And then Section 6, starting at the bottom of page 4 with

D4gdche5

Stewart - direct

1 the heading and then continuing on to page 5, the agreement
2 prohibits Mr. Fajardo from disclosing confidential information
3 with three exceptions. One exception is when he is authorized
4 to do so by the plaintiffs. Do you see that?

5 A. I see those words. Yes.

6 THE COURT: Could we go directly to it? We have been
7 over this document quite a bit today.

8 MS. NEUMAN: Yes, your Honor.

9 Q. This document authorizes Mr. Fajardo to release
10 information, if directed to do so, by either Mr. Donziger or
11 Mr. Yanza.

12 On behalf of your clients, have you ever requested
13 that Mr. Donziger use his rights under this agreement to get
14 documents from Ecuadorian counsel?

15 A. Have I requested Mr. Donziger to use this agreement to get
16 documents?

17 Q. Yes.

18 A. The answer to that question is no.

19 Q. Have you ever requested that Mr. Yanza, on behalf of your
20 clients, exercise his right to access the Ecuadorian counsel's
21 files under this agreement?

22 A. I've asked Mr. Yanza for documents on several occasions.
23 I've never referenced this agreement.

24 Q. This agreement also provides that the client file shall be
25 the property of the plaintiffs in Section 7.

D4gdche5

Stewart - direct

1 Do you see that?

2 A. I do.

3 Q. Have you ever brought any actions on behalf of your clients
4 to get access to those files which are their property in
5 connection with this document production?

6 A. I have not. I'm not a lawyer in Ecuador or authorized to
7 practice there.

8 Q. Have you ever at any time attempted to retain counsel for
9 Mr. Camacho and Piaguaje in Ecuador in order to force their
10 Ecuadorian counsel to provide them with access to the files
11 there?

12 A. I have not done that.

13 Q. Do you know whether anyone at Smyser Kaplan has done that?

14 A. I don't.

15 Q. The retention agreement notes that counsel who are retained
16 will become parties to the Master Agreement.

17 Are you familiar with that, Mr. Stewart?

18 A. I am not.

19 Q. Do you know whether or not Smyser Kaplan is a party to the
20 Master Agreement?

21 A. I do not.

22 Q. Has Ecuadorian counsel previously turned over to Smyser
23 Kaplan hundreds of draft pleadings from the Ecuador action?

24 A. I believe that there are draft pleadings, yes, produced to
25 our firm.

D4gdche5

Stewart - direct

1 Q. And who of the Ecuadorian counsel provided you those
2 hundreds of draft pleadings?

3 A. Juan Pablo Saenz and Julio Prieto.

4 Q. When did they provide those documents to you?

5 A. April of 2012.

6 Q. And in response to whose direction or request did Mr. Saenz
7 and Mr. Prieto provide you with hundreds of draft pleadings
8 from the Ecuador action?

9 A. It was a request made by Mr. Veselka and myself.

10 Q. And was there any objection to that request at the time it
11 was made, or did they just give you the document?

12 A. I don't believe there was an objection at the time.

13 Q. You mentioned that you have been to Ecuador seven or eight
14 times, is that right?

15 A. Six to eight times, yeah.

16 Q. And on any those occasions have you visited the Ecuadorian
17 counsel Selva Viva law offices?

18 A. I have.

19 Q. On how many occasions?

20 A. I think every time I have been there.

21 Q. On the six to eight times that you visited the Selva Viva
22 law offices, have you seen files there, paper documents, file
23 cabinets, that sort of thing?

24 A. I've seen the binders of the court record in a room, but
25 other than that I can't recall any other paper file.

D4gdche5

Stewart - direct

1 Q. And the lawyers there had computers on which they were
2 working, is that right?

3 A. The lawyers I have seen used laptop computers.

4 Q. While you were at the Selva Viva offices on these seven to
5 eight occasions, were you allowed to look in the binders of the
6 court record?

7 A. I never asked.

8 Q. Did you look at any documents on any of the occasions that
9 you were at the Selva Viva offices in Ecuador?

10 A. I may have looked at documents that I brought with me to
11 review with Ecuadorian counsel.

12 Q. Did you ever look at any of their documents while you were
13 there?

14 A. Not that I can recall.

15 Q. Did you ever have access to any of their computers while
16 you were there?

17 A. I did not.

18 Q. On the seven or eight occasions that you were in Ecuador at
19 the Selva Viva offices, were you working with Ecuadorian
20 counsel on your clients' defense in this case?

21 A. Yeah. I mean, that's the purpose of our visit.

22 Q. On any of the occasions that you were at the Selva Viva
23 offices with Ecuadorian counsel, was Mr. Donziger also there?

24 A. One time.

25 Q. On the occasion -- the one occasion that you were at Selva

D4gdche5

Stewart - direct

1 Viva at the same time as Mr. Donziger, was he participating in
2 the meetings where you were working on the defense of your
3 clients in this action?

4 A. No, he was not.

5 Q. Have you ever witnessed Mr. Donziger accessing any of the
6 files in the Selva Viva offices on that one occasion?

7 A. No. I mean, he came in shortly, said hello to some people,
8 and had to leave to go somewhere else.

9 Q. Do you have your declaration which we marked as Exhibit 10
10 in front of you, Mr. Stewart?

11 A. I do.

12 Q. Is there anything in this declaration that is not true and
13 correct?

14 A. Nope.

15 Q. OK. I would like to turn your attention to paragraph 5.

16 In paragraph 5, you state that, "After receiving
17 Chevron's first requests for production to Camacho and
18 Piaguaje, on June 7, 2012, I spoke with Pablo Fajardo by
19 telephone concerning the requests for production and forwarded
20 a copy of Chevron's requests to him."

21 Is that accurate?

22 A. It is. And I would also like -- there is some highlighting
23 on this document that I don't believe was in my original
24 declaration, just for the record.

25 THE COURT: Just ignore the highlighting. Let's go

D4gdche5

Stewart - direct

1 on.

2 Q. Was your conversation by phone with Mr. Fajardo on the
3 7th or is that simply the date the requests were served?

4 A. It is the date the requests were served.

5 Q. So when was your phone conversation with Mr. Fajardo?

6 A. Sometime a week or two after that.

7 Q. When you spoke to Mr. Fajardo on June 7th, 2012, did he
8 tell you that he would not be willing to produce any documents
9 in response to Chevron's requests?

10 A. I didn't talk to him on June 7th.

11 Q. I'm sorry. When you spoke to Mr. -- do you know the date
12 on which you did talk to him?

13 A. No.

14 Q. OK. When you spoke to him at some point in June 2012, did
15 Mr. Fajardo tell you that he would not be producing documents
16 in response to Chevron's requests?

17 A. He did.

18 Q. He did?

19 A. Yeah. He told me not, just as he told me not in 2011.

20 Q. And he told you that he would not be producing any
21 documents in response to the requests before he had seen the
22 requests, correct?

23 A. No. I forwarded Mr. Fajardo a copy of the requests.

24 Q. So by the time that you spoke to him in June, he had
25 reviewed the requests prior to your call?

D4gdche5

Stewart - direct

1 A. I don't know whether he reviewed them or not, but I believe
2 he had them at the time we spoke.

3 Q. Did you ever review the individual requests with
4 Mr. Fajardo and discuss whether he would produce any documents
5 on a request-by-request basis?

6 A. We talked about certain individual requests, but I don't
7 think we went over all the 180, or however many there were.

8 Q. Were there any on which he was willing to produce
9 documents?

10 A. No.

11 Q. Were you able to confirm in your discussions with
12 Mr. Fajardo that he had documents that were responsive to
13 Chevron's request for production of documents?

14 A. No.

15 THE COURT: All right. We are going to take a break
16 for about ten minutes here.

17 THE CLERK: All rise.

18 (Recess)

19 THE CLERK: All rise.

20 Please be seated.

21 THE COURT: Before we proceed with Mr. Stewart, I've
22 reflected a little bit further, Mr. Keker, about a ruling I
23 made on your cross of Mr. Donziger in which I sustained an
24 objection to the question -- this is in relation to the
25 March 30th Prieto e-mail. You know which one I am talking

D4gdche5

Stewart - direct

1 about?

2 MR. KEKER: Yes, sir.

3 THE COURT: I sustained two objections. The first was
4 as to this question: "So the issue was if they gave
5 confidential information of their clients to a U.S. court that
6 wanted it in the Stratus 1782 litigation, what was the risk, as
7 understood it?"

8 And the second question you followed up immediately,
9 and you asked: "Well, what did you understand when you said,
10 apart from destroying the proceeding, all of us, your
11 attorneys, might go to jail?"

12 And I sustained that objection.

13 I'm going to allow you to pose those questions and
14 follow up on them to Mr. Donziger, if you wish to do so, and
15 we'll interrupt Mr. Stewart and you can go ahead, within
16 reason. And then if there is any redirect, I'll deal with it.

17 MR. KEKER: I'm willing at this point just to move on,
18 your Honor.

19 THE COURT: OK.

20 MR. KEKER: Just for the record, though, I think the
21 question was -- and I don't have the transcript in front of
22 me -- it wasn't what you said, because he didn't write the
23 e-mail, it was what was your understanding when he said the go
24 to jail piece. Donziger didn't write it, and I was asking
25 Donziger his understanding.

D4gdche5

Stewart - direct

1 THE COURT: I'm not sure whether it was an error in
2 the draft transcript, and it is only a draft transcript. I
3 certainly understood the sense of your question to be just what
4 you said. Whether there was a slip of the tongue on your part
5 or a transcription problem, that was my understanding of the
6 sense.

7 MR. KEKER: Thank you.

8 THE COURT: And it is not fair to tax anybody with a
9 transcription problem because this is only a draft transcript
10 and the reporters, of course, do a magnificent job and they
11 have to clean it up at the end of the day.

12 MR. KEKER: If they clean it up -- if they clean me up
13 appropriately, I always appreciate the reporters at the end of
14 the day, your Honor. Thank you.

15 THE COURT: Well, we all do.

16 OK. Let's continue.

17 BY MS. NEUMAN:

18 Q. Mr. Stewart, do you still have Exhibit 10, your
19 declaration, in front of you?

20 A. I do.

21 Q. Returning to paragraph 5, you state there, in the first
22 full sentence on page 3, "Mr. Fajardo informed me that under
23 Ecuadorian law he was prohibited from providing Messrs. Camacho
24 and Piaguaje with these documents unless he obtained the
25 permission of all Aguinda plaintiffs." Do you see that?

D4gdche5

Stewart - direct

1 A. I do.

2 Q. Is that an accurate statement of what Mr. Fajardo told you
3 in your phone call?

4 A. He said that to me and I believe Mr. Smyser and Veselka as
5 well.

6 Q. All three of you were on the same call?

7 A. I believe so, or some combination of one or the other or
8 both of Mr. Smyser and myself.

9 Q. Was there anyone else on the call than yourself,
10 Mr. Smyser, Mr. Veselka and Mr. Fajardo?

11 A. I don't believe so.

12 Q. When Mr. Fajardo said that Ecuadorian law prohibited him
13 from providing these documents, was he referring to any
14 documents of any kind that were responsive to Chevron's
15 request?

16 A. I'm not sure what Mr. Fajardo was referring to. He was
17 referring to documents that he had in his possession that
18 belonged to the Aguinda plaintiffs. That's what I understood
19 him to be referring to.

20 Q. Did you understand Mr. Fajardo in June of 2012 to be
21 refusing to produce to his clients, Mr. Camacho and
22 Mr. Piaguaaje, for example, any communication that he had had
23 with Richard Cabrera?

24 A. I understood that was one of Chevron's requests, so I
25 understood that he was not going to provide that to Camacho or

D4gdche5

Stewart - direct

1 Piaguaje or their counsel; that is Smyser Kaplan & Veselka.

2 Q. Did you also understand from Mr. Fajardo in this June 2012
3 conversation that he was refusing to provide any communications
4 that Ecuadorian counsel had had with any judge who had presided
5 over the Ecuador litigation?

6 A. If those were included in Chevron's requests and if such
7 documents existed, my understanding is that he would not
8 produce documents that were in his possession if they existed.

9 Q. Was it also your understanding that Mr. Fajardo's refusal
10 was based on Ecuador secrecy doctrine?

11 A. My understanding is it was based on a number of provisions,
12 including the Constitution and several civil and penal
13 provisions of the Ecuadorian codes.

14 Q. And was it your understanding that those provisions covered
15 communications between Ecuadorian counsel and third parties?

16 A. I'm not an Ecuadorian lawyer and I don't have an
17 understanding of the intricacies of Ecuadorian law.

18 Q. Did you have anyone analyze whether the Ecuadorian --
19 anyone other than Mr. Fajardo analyze whether Ecuadorian
20 secrecy laws actually covered communications between Ecuadorian
21 counsel and third parties like the judge in the case?

22 A. We obtained several opinions from former members of the
23 Ecuadorian Supreme Court as to the legal prohibitions on
24 Mr. Fajardo turning over documents that belonged to a group of
25 clients, to just two of his clients, but I do not believe the

D4gdche5

Stewart - direct

1 question you are posing was proposed to either of those former
2 justices.

3 Q. So no opinion was obtained as to that issue, correct?

4 A. Your specific question, no, ma'am.

5 Q. You then state in your declaration that Mr. Fajardo said he
6 would request permission from his other clients to provide
7 Messrs. Camacho, Piaguaje information in his possession related
8 to the Aguinda suit, is that right?

9 A. Yes. That's correct.

10 Q. And did Mr. Fajardo tell you in this June conversation that
11 if the other Ecuadorian plaintiffs consented, he would then
12 produce the requests documents, at least to your clients?

13 A. I don't think he took it that far down the line of
14 discussion.

15 Q. Well, Mr. Fajardo told you in this conversation that he was
16 going to seek this consent, correct?

17 A. Right.

18 Q. And was the implication that if he obtained the consent he
19 would then produce the documents?

20 A. He didn't talk about whether or not he would produce the
21 documents. He said he would seek consent. That's what we
22 discussed.

23 Q. Was there ever a time that Mr. Fajardo told you that if all
24 47 consented to the production, he would actually produce the
25 documents?

D4gdche5

Stewart - direct

1 A. Sitting here today, I don't recall such a statement.

2 Q. Is it fair to say that, at a minimum, Mr. Fajardo made
3 clear that if the other 45 did not consent, then he would not
4 produce the documents, correct?

5 A. In this conversation in June of 2012, Mr. Fajardo did not
6 talk about what his action would be based on the results of
7 seeking consent.

8 Q. One way or the other?

9 A. No.

10 Q. And you didn't ask him?

11 A. No.

12 Q. Did Mr. Fajardo indicate in this June conversation how soon
13 he would know whether or not the other plaintiffs had
14 consented?

15 A. No. He said it would take a while to get in touch with
16 everybody. I understand that they have regular meetings with
17 representatives of the plaintiffs and the plaintiffs, but he
18 didn't say how long it would be.

19 Q. During the time that you have represented Mr. Piaguaje and
20 Mr. Camacho, are you aware of Mr. Fajardo ever seeking their
21 permission to disclose documents related to the Ecuador
22 litigation?

23 A. I am aware based on -- yes, I'm aware that he has done
24 that.

25 Q. On how many occasions?

D4gdche5

Stewart - direct

1 A. A few occasions. I don't know exactly how many.

2 Q. Do you know if the permission was given?

3 A. I don't believe it was.

4 Q. And did Mr. Fajardo seek this permission from your clients
5 in writing?

6 A. I believe Mr. Fajardo discussed obtaining -- or, I'm sorry,
7 producing documents with Messrs. Camacho and Piaguaje in 2011
8 orally and also in 2012 orally.

9 Q. When Mr. Fajardo was discussing producing documents with
10 Mr. Piaguaje and Mr. Camacho, was he discussing producing
11 documents in this action or in another action?

12 A. I wasn't present in those conversations.

13 Q. So you don't know one way or the other?

14 A. I don't. I just know that conversations occurred.

15 Q. Did Mr. Camacho and Mr. Piaguaje ever put in writing to
16 Mr. Fajardo their consent to his producing documents in this
17 action?

18 A. No. I don't think there has ever been anything in writing
19 about that.

20 Q. Did Mr. Camacho and Mr. Piaguaje ever put in writing to
21 Mr. Fajardo their demand that he give them access to the
22 Ecuadorian counsel files?

23 A. I don't believe such a demand has been made in writing by
24 Messrs. Camacho or Piaguaje themselves.

25 Q. Has Smyser Kaplan made such a written demand on their

D4gdche5

Stewart - direct

1 behalf?

2 A. I believe Mr. Smyser has sent letters to -- no, I actually
3 don't. I can't recall whether there has been a written demand,
4 a formal written demand. I've sent requests in person and over
5 the phone, and there may be an e-mail in which a request has
6 been made for documents, but I can't say that for certain.

7 Q. When Mr. Fajardo told you in June 2012 that he could not
8 provide copies of the files to your clients, did you ask
9 Mr. Fajardo if you could review and at least log the responsive
10 documents without making copies?

11 A. Yes.

12 Q. What was his response to that?

13 A. He would not let us do that.

14 Q. And did he cite you to any provision of Ecuadorian law that
15 would prevent your clients from having access solely for the
16 purpose of logging the documents?

17 A. I don't believe there is any -- I don't understand
18 Ecuadorian law in terms of privilege logging. So, no, I don't
19 believe he did.

20 Q. And is it accurate that you explained to Mr. Fajardo that
21 the U.S. process is that you gather the responsive documents,
22 you evaluate whether or not they are privileged, and if they
23 are privileged you log them, and only if they are not
24 privileged do you produce them? Did you explain that to him?

25 A. We've explained U.S. procedures to Mr. Fajardo many times,

D4gdche5

Stewart - direct

1 and I don't think he believes it applies to him. He is an
2 Ecuadorian lawyer in Ecuador.

3 Q. Now, in June of 2012, at the same time Mr. Fajardo was
4 refusing to turn over documents in connection with this case,
5 he was providing Smyser Kaplan with information on analogous
6 topics for use in the Banco Pichincha 1782, correct?

7 A. I was not involved in the Banco Pichincha 1782
8 representation to a great degree. So, no, I don't know.

9 Q. You are aware that Smyser Kaplan represents -- let me
10 withdraw that.

11 You are aware that Chevron has brought a Section 1782
12 action in the federal district court in Miami seeking the
13 production of documents from Banco Pichincha, including
14 documents held in the Selva Viva in secret accounts, correct?

15 A. I'm aware that there is a 1782 action that Chevron has
16 filed against Banco Pichincha, yes.

17 Q. And you are aware that Smyser Kaplan represents all 47
18 plaintiffs in that action, is that right?

19 A. I did not know that. I have not been heavily involved in
20 the Banco Pichincha proceeding.

21 Q. Have you ever been involved on updating the 47 clients that
22 are represented there on the status of the Banco Pichincha
23 proceeding?

24 A. I have not. I have spoken with Mr. Camacho and
25 Mr. Piaguaje about that proceeding.

D4gdche5

Stewart - direct

1 Q. And you have not spoken to the other 45 Smyser Kaplan
2 clients about that proceeding, is that right?

3 A. I have not.

4 Q. And who has primary responsibility for the Banco Pichincha
5 proceeding?

6 A. Mr. Veselka has worked on the Banco Pichincha matter.

7 Q. Did you have any involvement in the objection that Smyser
8 Kaplan filed to the Magistrate Judge's Order and Recommendation
9 that the subpoena issue in the Banco Pichincha matter in June
10 of 2012?

11 A. I believe I probably reviewed a draft, like most pleadings.
12 I may have provided comments, but I did not draft that
13 document.

14 Q. There is a statement in that pleading as follows: "The
15 Ecuadorian plaintiffs' counsel paid Cabrera in the amount of
16 his request made to the Court so that his work would not stop
17 while Cabrera's payment requests sat on the Judge's desk."

18 Are you familiar with that statement?

19 A. I am.

20 Q. Were you involved in getting any information from
21 Ecuadorian counsel in support of that assertion?

22 A. I was a participant on a phone call where that was
23 discussed.

24 Q. Were any checks from the Banco Pichincha account which show
25 that Ecuadorian counsel paid Cabrera in the amount of his

D4gdche5

Stewart - direct

1 request that was pending at that time provided to Smyser
2 Kaplan?

3 A. No.

4 Q. Were any other documents that verify the statement made in
5 the objections pleading filed in Miami provided to Smyser
6 Kaplan?

7 A. I don't know.

8 Q. In the phone call in which you participated, who was
9 providing information to Smyser Kaplan about the payments to
10 Cabrera?

11 A. Mr. Fajardo.

12 Q. So is it accurate that at the same time Mr. Fajardo is
13 telling you he can't provide case information for production in
14 this case, he is on a phone call providing you with factual
15 information about the Ecuadorian litigation for use in the
16 Banco Pichincha matter?

17 A. Mr. Fajardo discloses the information that he believes he
18 is permitted to disclose, and we use all the information we can
19 obtain from him to diligently represent our clients.

20 Q. Well, in the Banco Pichincha matter, Mr. Fajardo was
21 disclosing information about his interactions with Cabrera,
22 correct?

23 A. His or other Ecuadorian plaintiffs' representative, I
24 believe.

25 Q. OK. So when Mr. Fajardo voluntarily disclosed that

D4gdche5

Stewart - direct

1 information to you on the phone call about the Banco Pichincha
2 matter, did you say to him, you know, Chevron has a request for
3 production of documents related to your communications with
4 Cabrera. So if you can provide us information on that topic,
5 will you at least produce the Cabrera documents?

6 A. We had a similar discussion that Mr. Fajardo has told us he
7 could not provide responsive documents but that he was
8 providing us some information, and asked for an understanding
9 of why Mr. Fajardo provided information. And he said that
10 under the provisions of Ecuadorian law that applied, he was
11 providing what he was legally able to provide at that time.

12 Q. And how did he describe this legal line that he was
13 drawing?

14 A. I don't believe it was discussed in that call about the
15 Banco Pichincha matter.

16 Q. Well, has it become apparent to you in working with
17 Mr. Fajardo and receiving information at times and not
18 receiving it at other times, that Mr. Fajardo provides you with
19 information when he thinks it will be helpful to your clients'
20 case and that at all other times he refuses to provide you with
21 information?

22 A. I don't think that is an accurate statement. There are
23 plenty of times when we have asked for information that we
24 think would be helpful and it would be apparent to Mr. Fajardo
25 that it would be helpful for the defense of our clients that he

D4gdche5

Stewart - direct

1 has refused to provide that information.

2 Q. Even though he has had it?

3 A. Yes.

4 Q. And what information would that be?

5 A. Throughout the case we've asked --

6 MR. SMYSER: Excuse me, your Honor. Objection. I
7 think he is getting into work product now asking him what
8 information he would be asking Mr. Fajardo to provide him in
9 the defense of the case.

10 THE COURT: Rephrase your question.

11 You are asking what information he's refused to
12 provide?

13 MS. NEUMAN: Yes, your Honor.

14 BY MS. NEUMAN:

15 Q. What specific information has Mr. Fajardo refused to
16 provide other than his blanket refusal to respond to Chevron's
17 requests for production of documents?

18 MR. SMYSER: The same objection, your Honor. It is
19 work product. He is asking -- in order to say what information
20 he has refused to provide, he's going to have to say this is
21 information that he asked for, which is core attorney work
22 product.

23 THE COURT: What do you say to that, Ms. Neuman?

24 MS. NEUMAN: Well, your Honor, I think they've waived
25 the work product to the extent that they're saying that they

D4gdche5

Stewart - direct

1 have examples of when Mr. Fajardo has refused to provide
2 helpful information. We have no way to test whether that
3 information exists, whether in fact he refused to provide it.

4 MR. SMYSER: Your Honor, none of the questions so far
5 have gotten into work product to the extent this question got
6 into it. We have to answer the questions they ask in order to
7 demonstrate -- in order to respond to the accusations against
8 us, but we are being very careful doing our best not to allow
9 work product to be penetrated. And I don't want to be in a
10 position of waiving work product, having this argument made.

11 I think this is a core work product question.

12 THE COURT: Well, it might or it might not be. Is
13 there any argument it doesn't apply here at all, Ms. Neuman, or
14 not?

15 MS. NEUMAN: Well, your Honor, if he has refused to
16 provide information that's not protected in the first place,
17 such as communications with judges or Cabrera or others, I
18 don't see how his refusal is work product.

19 THE COURT: I will sustain it for now. I will think
20 about it overnight.

21 MS. NEUMAN: Thank you, your Honor.

22 BY MS. NEUMAN:

23 Q. Mr. Stewart, your firm is in possession of videos that they
24 allege were commissioned by Chevron which allegedly show
25 conduct related to the judicial inspections. Are you familiar

D4gdche5

Stewart - direct

1 with those videos?

2 A. I know they exist. I have not seen them.

3 Q. And is it your understanding that those videos were
4 obtained from Pablo Fajardo?

5 A. Yes.

6 Q. Do you have any documents demonstrating that your client
7 consented to those videos being turned over to Smyser -- I'm
8 sorry. Withdraw that.

9 Do you have any documents indicating the 48 Lago
10 plaintiffs consented to those videos being turned over to your
11 firm?

12 A. I don't.

13 Q. Of all the information that your firm has received from
14 Mr. Fajardo, including the hundreds of draft pleadings, the
15 factual information provided over the phone, the Zambrano
16 declaration, the videos and other information, have you ever
17 seen any documents or hear any evidence that all 47 plaintiffs
18 consented to the release of each piece of information as it was
19 released to your firm?

20 A. I have not seen a consent to each piece of information, but
21 I don't know that all of those pieces of information you
22 described required consent, as I understand it.

23 THE COURT: Ms. Neuman, just fill me in on one thing.
24 These draft pleadings, are these materials that Chevron
25 requested production of?

D4gdche5

Stewart - direct

1 MS. NEUMAN: Yes, your Honor. These are materials
2 that are logged. Based on the earlier conversation regarding
3 the log, I didn't put the log in front of the witness.

4 THE COURT: OK. Go ahead.

5 BY MS. NEUMAN:

6 Q. I want to move, Mr. Stewart, from June to August.

7 On August 13, 2012, Chevron moved to compel the
8 production of the documents in the possession of Mr. Camacho
9 and Mr. Piaguaje's agents. You are familiar with that, sir?

10 A. Yes.

11 Q. And you understood those agents to include Mr. Fajardo,
12 Mr. Prieto, Mr. Saenz and Mr. Yanza, correct?

13 A. Yes.

14 Q. You made a trip to Ecuador in August of 2012, correct?

15 A. I did.

16 Q. What were the dates of your trip?

17 A. I traveled to Ecuador with Mr. Smyser on the evening of
18 August 13th and returned on the morning of August 15th.

19 Q. In your declaration you state that you and Mr. Smyser met
20 with Mr. Fajardo and Mr. Saenz in Ecuador on the 14th. Is that
21 accurate?

22 A. Yes.

23 Q. Was there anyone else present at that meeting?

24 A. No.

25 Q. Was the purpose of this meeting to work on the defense for

D4gdche5

Stewart - direct

1 your clients in this action?

2 A. Yes.

3 Q. And did the meeting take place at the Selva Viva offices?

4 A. It did.

5 Q. At this meeting did Mr. Fajardo tell you that he had not
6 received the consent of the other 45 plaintiffs to provide
7 documents?

8 A. I don't believe at that time Mr. Fajardo had been able to
9 contact all of the 47 plaintiffs. So I don't recall him making
10 that statement in August of 2012.

11 Q. Can I direct your attention to paragraph 6 of your
12 declaration.

13 In the third -- I'm sorry, yes, third sentence, you
14 state: "Mr. Fajardo confirmed that he had requested the
15 consent of his other clients to provide the requested documents
16 and that he did not receive such consent."

17 Do you see that?

18 A. I do.

19 Q. Is that sentence not describing something that Mr. Fajardo
20 told you in the August 14th meeting?

21 A. I believe so. I'm not sure if he had been able to get in
22 touch with all 45. I think there was a few that he had not
23 gotten in touch with.

24 Q. At the time of the meeting?

25 A. At the time of the meeting, I believe so.

D4gdche5

Stewart - direct

1 Q. But were there some who at the time of the meeting he told
2 you had not consented?

3 A. He had not received consent from anyone he had asked.

4 Q. And had he received from anyone rejection of the idea of
5 producing the documents?

6 A. I believe that's what everyone gave him when they didn't
7 give consent.

8 Q. Was it your understanding that Mr. Fajardo was contacting
9 the other 45 plaintiffs on an individual basis?

10 A. I don't have an understanding as to how he was going about
11 getting consent.

12 Q. Now, on August 14, the same day as your meeting with
13 Mr. Fajardo in the Selva Viva offices, he sent a letter to your
14 clients telling them that he would not provide them the
15 documents created in connection with their case in Ecuador,
16 correct?

17 A. That is correct, with a copy to Mr. Smyser.

18 Q. Did you or Mr. Smyser ask Mr. Fajardo to draft his
19 August 14th letter?

20 A. Mr. Fajardo told us his position in the meeting, and we
21 asked him to provide his same position in writing. So, yes.

22 Q. And did you or Mr. Smyser participate in the drafting of
23 Mr. Fajardo's August 14th correspondence?

24 A. We did not.

25 Q. Did Mr. Fajardo draft that correspondence while you were

D4gdche5

Stewart - direct

1 present in the Selva Viva offices on August 14th?

2 A. I don't believe so. We had other things to do in Quito
3 that day.

4 Q. Did you have any conversations with Mr. Fajardo about what
5 the August 14th correspondence should say?

6 A. No.

7 Q. Did Mr. Fajardo deliver that letter to Mr. Smyser on the
8 14th of August in 2012?

9 A. I don't recall. If he did, it would have been that evening
10 or it would have been via e-mail. But I don't recall him
11 turning it over to Mr. Smyser during the meeting that we had in
12 the morning.

13 Q. The letter does not have addresses for your clients. Does
14 Mr. Fajardo e-mail them correspondence?

15 A. I'm not sure how he does that. I know that there are
16 individuals who make home deliveries to our clients often
17 because they live in very remote areas of the jungle where
18 e-mail and things like that are not available.

19 Q. Are you saying both your clients live in remote areas of
20 the jungle, sir?

21 A. Mr. Camacho lives in Joya de los Sachas; it is a remote
22 area. And Mr. Piaguaje lives in an area outside of
23 Shushufindi, and my understanding is that at their homes they
24 did not have regular access to e-mail, so I believe Mr. Fajardo
25 has documents delivered to them by messenger, but I don't know

D4gdche5

Stewart - direct

1 how in particular he delivered this particular letter.

2 Q. But is it accurate that Mr. Fajardo sends correspondence to
3 Mr. Smyser by e-mail?

4 A. Often. Sometimes he'll send it via mail. Yes.

5 Q. Is it fair to say that in the August 14, 2012 meeting, both
6 Mr. Fajardo and Mr. Saenz made it clear that they would not be
7 providing any documents in response to Chevron's discovery
8 requests in this action?

9 A. Yes. This was --

10 THE COURT: Ms. Neuman, this is very repetitious.

11 BY MS. NEUMAN:

12 Q. On August 15th, did you meet with Dr. Bermeo in Ecuador?

13 A. No. I left Ecuador the morning of August 15th.

14 Q. Your clients had previously submitted two declarations from
15 Dr. Bermeo, one dated August 15 and one dated September 10th,
16 on the issues of Ecuadorian law that we're discussing; do you
17 recall that?

18 A. Yes.

19 Q. Both those declarations are now withdrawn, is that correct?

20 A. I can't speak to that. I take directions from Mr. Smyser
21 and Mr. Veselka. I am just an associate on the case.

22 Q. But do you understand that Dr. Bermeo is no longer
23 available to be an expert in the matter?

24 A. Dr. Bermeo has been recently appointed to a position within
25 the Ecuadorian judiciary. That is my understanding.

D4gdche5

Stewart - direct

1 Q. Dr. Bermeo signed his first report on August 15th, 2012.

2 THE COURT: Ms. Neuman, are you saying they have been
3 formally withdrawn?

4 MS. NEUMAN: I believe so, your Honor. I received a
5 letter from Mr. Veselka on March 28, 2012, stating that,
6 "Dr. Bermeo, one of defendants' designated expert witnesses,
7 was just appointed to serve as General Counsel to the National
8 Judicial Council of Ecuador as a judicial employee. He will no
9 longer be able to serve as an expert in pending litigation."

10 I assume that meant his declarations were withdrawn.

11 THE COURT: Is that what it means?

12 MR. SMYSER: No, your Honor. It does not mean that.

13 THE COURT: Don't do that, please, Ms. Neuman. It
14 just doesn't say that.

15 Let's move on.

16 BY MS. NEUMAN:

17 Q. Was Mr. Fajardo involved in retaining Dr. Bermeo?

18 A. I don't believe so. Mr. Fajardo suggested the name of
19 Bermeo but did not -- was not involved in the retainer of
20 Dr. Bermeo.

21 Q. Was he involved in working with Dr. Bermeo at all on his
22 expert declarations?

23 A. No.

24 Q. Now, on October 4th you participated in a phone call with
25 Pablo Fajardo and Craig Smyser, correct?

D4gdche5

Stewart - direct

1 A. Yes.

2 Q. Was there anyone else on that call?

3 A. I believe Mr. Veselka was on the call but I can't say for
4 100 percent certainty.

5 Q. You state in your declaration that during this call,
6 Mr. Smyser suggested to Mr. Fajardo to ask an Ecuadorian court
7 for a ruling on the rights and obligations of the lawyers and
8 the clients in this relationship governed by Ecuadorian law.

9 Is that right?

10 A. Yes. That's what it says.

11 Q. Can you tell me exactly what it was Mr. Smyser suggested?

12 A. Exactly what it says here, that we had declarations from
13 Dr. Bermeo, a former justice on the Supreme Court, and a
14 subsequent declaration from an expert retained by Chevron that
15 came to different conclusions under Ecuadorian law, and so
16 Mr. Smyser suggested that the best way to resolve doing expert
17 opinions on a question of Ecuadorian law would be to ask an
18 Ecuadorian court to provide a declaration as to the rights and
19 obligations of the clients and the lawyers in that relationship
20 governed by Ecuadorian law.

21 THE COURT: OK. We are going to stop right here for
22 today. I have one or two questions for counsel.

23 Mr. Mastro, this morning you made some reference to a
24 ruling in the 1782 case in Washington involving Mr. Wray.

25 MR. MASTRO: Yes, your Honor.

D4gdche5

Stewart - direct

1 THE COURT: And I would like to know the reference to
2 it.

3 MR. MASTRO: Sure. Your Honor, we will be happy to
4 submit the ruling. It was Mr. Wray -- Dr. Wray, who was the
5 former lead counsel for the Ecuadorian --

6 THE COURT: I know who he was.

7 MR. MASTRO: Right. And in opposing the 1782
8 discovery had made a similar argument about Ecuadorian secrecy,
9 and Judge Kollar-Kotelly rejected --

10 THE COURT: I heard what you said earlier. Thank you.
11 I just want to see the reference. I want to see the
12 ruling.

13 MR. MASTRO: Sure. Absolutely.

14 THE COURT: And I want to see what lead up to it.

15 MR. MASTRO: Sure. Absolutely, your Honor.

16 THE COURT: If it is online on PACER, I can look
17 myself. I just want to know where it is.

18 MR. MASTRO: No problem. We will get that for the
19 Court.

20 THE COURT: OK. So I will see you all at 9:30.

21 MR. MASTRO: Thank you, your Honor.

22 THE CLERK: All rise.

23 THE COURT: Mr. Smyser, what is on your mind?

24 MR. SMYSER: I'm sorry, your Honor. I understood the
25 Court earlier to put restrictions on lawyers speaking with

D4gdche5

Stewart - direct

1 witnesses who are on the stand. I would ask the Court to
2 permit me to speak with my lawyer that I'm working with on this
3 case tonight.

4 THE COURT: You may, but not about the examination or
5 anything that you think may come up in the examination or any
6 response to further questions by either side in this hearing.

7 And I understand that some allowance is appropriate in
8 light of the fact that you are all working on the case, but
9 there are going to be some ground rules on that.

10 MR. KEKER: Can we leave our boxes here, your Honor?

11 THE COURT: Andy will work with you on that.

12 MR. MASTRO: Thank you, your Honor.

13 (Adjourned to 9:30 a.m., Wednesday, April 17, 2013)
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17
18
19
20
21
22
23
24
25

1 INDEX OF EXAMINATION

2	Examination of:	Page
3	STEVEN DONZIGER	
4	Direct By Mr. Mastro18
5	Cross By Mr. Keker86
6	Redirect By Mr. Mastro	121
7	Recross By Mr. Keker	142
8	Redirect By Mr. Mastro	149
9	JAROD STEWART	154

10 PLAINTIFF EXHIBITS

11	Exhibit No.	Received
12	1 and 261
13	3 through 7	118
14	8 and 9	154